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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth report of States parties due in 1999

Addendum

Mauritius*

[22 March 1999]

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* This document contains the thirteenth and fourteenth periodic reports of Mauritius, submitted in one document, due on 29 June 1997 and 1999, respectively. For the eighth, ninth, tenth, eleventh and twelfth reports of Mauritius, submitted in one document, and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/280/Add.2 and CERD/C/SR.1173-1174.

The information submitted by Mauritius in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.60/Rev.1.

GE.99-41865 (E)

Introduction

1. The report constitutes the thirteenth and fourteenth periodic reports submitted under article 9 of the Convention and is drafted in the light of the general guidelines regarding the form and content of reports to be submitted by States parties adopted by the Committee on the Elimination of Racial Discrimination.

I. GENERAL

2. General information on the land and people was given in the last periodic reports. No breakdown of the population according to race or ethnic origin is available.

3. There has been no significant change in the general political structure since the presentation of the last periodic reports in August 1996.

4. As far as the general legal framework within which human rights are protected in Mauritius is concerned, it is worth noting the setting up of a National Human Rights Commission by an Act of Parliament in 1998. A copy of the Protection of Human Rights Act 1998 is annexed.* The Act came into force in February 1999.

5. The setting up of the National Human Rights Commission ("the Commission") is aimed at the better protection of human rights and the better investigation of complaints against members of the police force. The Commission will be chaired by a former judge and the other three members will be:

(a) A former judge or a barrister of more than 10 years' standing; and

(b) Two other persons having knowledge of, or practical experience in, matters relating to human rights.

6. The Commission may exercise such functions as it considers conducive to the promotion and protection of human rights and, in particular:

(a) Inquire into any written complaint from any person alleging that any of his human rights has been, is being or is likely to be violated by the act or omission of any person acting in the performance of a public function, or by the act or omission of a member of the police force;

(b) Inquire of its own motion where it has reason to believe that such an act or omission has occurred, is occurring or is likely to occur;

(c) Visit any police station, prison or other place of detention under the control of the State to study the living conditions of the inmates and the treatment offorded to them;

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* Available for consultation in the files of the secretariat.

(d) Review the safeguards provided by or under any enactment for the protection of human rights;

(e) Review the factors or difficulties that inhibit the enjoyment of human rights.

These functions may be exercised without prejudice to the jurisdiction of the courts or the powers conferred on the Director of Public Prosecutions or the appropriate Service Commission.

7. The Commission is to attempt, in the first place, to resolve any complaint, or matter which is the subject matter of an inquiry, by a conciliatory procedure. Where it has not been possible to resolve the matter through conciliation, the Commission shall, on completion of the inquiry:

(a) Send a written report, setting out its conclusion and any recommendation with regard to the grant of any relief to the complainant, to the Minister responsible for human rights who shall, as soon as practicable, report to the Commission the action taken or proposed to be taken;

(b) Where the inquiry discloses a violation of human rights, or negligence in the presentation of such violation, refer the matter to the Director of Public Prosecutions, the appropriate Service Commission or the chief executive officer of the appropriate public body, for prosecution or disciplinary action.

8. A Presidential Commission was also set up in 1997 to report on changes that may be necessary:

(a) To safeguard the independence and impartiality of the judiciary;

(b) To secure the just, humane, prompt, efficient and economical disposal of the business of the courts;

(c) To ensure the ready access of the people of Mauritius to the courts for the determination of their rights and the remedying of their grievances;

(d) To ensure that the courts are as well equipped as possible to adapt to changing social needs;

(e) To regulate the relationship between the legal service and the judicial service;

(f) To enable the legal profession to achieve the highest standards.

9. The Presidential Commission was chaired by Lord Mackay of Clashfern, a former Lord Chancellor of the United Kingdom, and consisted of other experienced and respected members of the legal profession, of a distinguished French academic and of a member of the private sector.

10. The report of the Commission was made public in August 1998 and contained a number of recommendations, some of which will entail far-reaching reforms and will require further consideration. The Administration of Justice (Miscellaneous Provisions) Bill was introduced in the National Assembly in December 1998 and will lead to the implementation of those recommendations of the report which do not necessitate profound change to the system.

11. The last report made reference to the judgement delivered by the Supreme Court of Mauritius in the case of *Pointu v. Minister of Education (1995)* SCR No. 53810 which illustrated the willingness of our domestic courts to decide an issue involving fundamental rights in harmony with international human rights instruments. This judgement has since been reviewed by the Judicial Committee of the Privy Council in 1997. The Judicial Committee quotes with approval an extract of a 1984 judgement delivered by Acting Chief Justice Rajsoomer Lallah (as he then was), which emphasizes that constitutions must be read within their own particular context and framework and that "one should be very cautious in importing wholesale into the structure and framework of our Constitution a complete article of the kind that Article 14 of the Indian Constitution or the 14th amendment of the American Constitution" is. The Judicial Committee goes on to state that international conventions such as the International Covenant on Civil and Political Rights are a proper part of the background against which section 3 (of our Constitution) must be construed, and that it is the legal and political system as a whole and not merely the human rights entrenched in the Constitution which must comply with the Covenant, so that it is wrong to assume that a State party can comply with the Covenant only by enacting its principles as part of its constitutional law.

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Articles 2 and 4

12. There has been no new legislative measure giving effect to articles 2 and 4. No case has been entered before the Supreme Court or subordinate courts between 1996 and March 1999 for breach of our statutory provisions prohibiting racial discrimination.

13. The President of the Republic of Mauritius has taken the initiative of spearheading a number of measures aimed at promoting racial harmony within the island.

14. In 1996, he selected 10 persons of different ethnic origins and religious faiths to form a think-tank ("Commission de réflexion"), the terms of reference of which are:

(a) To review periodically the social situation and advise on action to be taken;

(b) To promote harmony and tolerance amongst the different cultural, ethnic and age groups;

(c) To reflect on the challenges facing Mauritian society and to submit proposals to meet these challenges, in particular from a religious/spiritual point of view;

(d) To be proactive and foresee future problems.

15. The think-tank has met on several occasions and convened the press to impart their views and highlight selected extracts of different sacred Scriptures which they believed to be of particular relevance.

16. In 1997, the President also set up the "Committee on Poverty" ("Comité sur la pauvreté"), of which the aim is to make severe poverty disappear by the year 2007 and to reduce poverty in general. Three pilot projects were set up in three different regions of the island each of which is inhabited by people of different ethnic origins. In March 1999, the President launched the "Presidential Education Trust" which will help sponsor the raising and education of 100 children from poor regions, from the age of 3 up to the age of 18.

17. The Cassam Uteem Foundation for Children (which bears the name of the President) was also set up in 1998 to provide assistance in the field of education and health to needy children, and to promote the welfare of children generally.

18. In February 1999, riots broke out following the death of a popular singer (of African origin and commonly referred to as "Creole") in a police cell. For the first two days, the riots appeared to be directed at the authorities in general and the police authorities in particular, and were concentrated in areas where poverty was rampant. The situation then degenerated and trouble flared up between "Creole" groups and groups of Indian origin. The situation was brought under control after the President, the Prime Minister and the Leader of the Opposition, as well as dignitaries of various religious faiths, made earnest appeals on television for the situation to return to normal.

19. A Commission of Inquiry has been set up to look, inter alia, into the cause of the riots. Representatives of the Catholic Church and of Hindu priests have publicly expressed their wish to defuse any latent tension between those two sections of the population by having a constructive dialogue. The President is organizing a march on 21 March 1999 which is to end at his residence, the State House, designed to reaffirm the unity between the various components of the population.

20. The Prime Minister has publicly announced that an Equal Opportunities Act will be passed in the near future to ensure that all Mauritian citizens are given the same opportunities and, inter alia, to prevent any inequality based on race, religion or ethnic origin.

21. The Republic of Mauritius notes that the Committee expressed concern, at paragraph 16 of document CERD/C/304/Add.19, at the fact that Mauritian legislation does "not prohibit organizations and organized propaganda activities which promote racial discrimination, as provided for in

article 4 (b) of the Convention"; the Committee further recommended, at paragraph 20 of the same document, that legislative measures be taken to implement article 4 (b) of the Convention.

22. No law has been enacted in Mauritius to implement article 4 (b) of the Convention because it is already possible under our criminal law to prosecute organizations and also organized and all other propaganda activities which promote and incite racial discrimination. While section 282 of the Criminal Code provides for the offence of "stirring up racial hatred" (the adoption of which was "noted with appreciation" at paragraph 10 of document CERD/C/304/Add.19), section 109 of the Criminal Code (Supplementary) Act makes it an offence for any person to agree with one or more persons to commit an act which is "unlawful, wrongful or harmful to other person". It is therefore possible under existing provisions of the criminal law to prosecute members of an organization which promotes racial discrimination under section 282 of the Criminal Code, together with section 109 of the Criminal Code (Supplementary) Act.

Articles 5 and 6

23. None of the rights mentioned at paragraphs (a), (b), (c) and (d) of article 5, which are guaranteed by our Constitution, has been amended.

24. Section 16 of the Constitution has not been amended since the presentation of the last reports, when the Committee noted with concern that that section does not apply to "laws with respect to marriage, adoption, divorce, succession or other matters regarding private law" and recommended that the prohibition, in section 16, of discriminatory legislation be "extended to all matters of private law" (see paragraphs 15 and 19 of document CERD/C/304/Add.19).

25. Although section 16 (1) of the Constitution states the general rule that "... no law shall make any provision that is discriminatory either of itself or in its effect", this rule has to be read subject to the express exceptions in section 16 (4), paragraph (c) of which provides that section 16 (1) shall not apply to any law so far as that law makes provision "for the application, in the case of persons of any such description as is mentioned in subsection (3) (...), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters, that is the personal law applicable to persons of that description" (emphasis added).

26. Although the Republic of Mauritius has taken note of the recommendation of the Committee with regard to section 16 of the Constitution, it has not been possible to remove subsection (4) (c) of that section because of the sensitive nature of the "Muslim Personal Law" issue in our multi-religious society. About 20 per cent of the Mauritian population consists of Muslims, most of whom are in favour of a Muslim Personal Law. Government has, therefore, in September 1998, set up a committee of eminent lawyers to make recommendations as to the way in which provisions of the Muslim Personal Law relating to marriage, divorce and the devolution of property may be introduced into Mauritian law. The committee will, in particular, be looking into the compatibility of the Muslim Personal Law with the obligations of Mauritius under major human rights instruments.

Economic, social and cultural rights

The right to work and the right to form and join trade unions

27. Section 13 of the Constitution protects the right to form and become a member of a trade union. This is reinforced by further provisions of the Industrial Relations Act.

28. The growth of the Mauritian economy together with the demographic trends resulted in a tight labour market. Thus, foreign workers have been recruited to meet the labour shortage in the construction sector and the export processing zone. However, this situation is temporary since the country has now embarked on more technology-oriented industrialization.

29. The table below indicates the number of foreign workers employed in Mauritius between 1995 and 1997:

Industry	1995	1996	1997
Agriculture and fishing	100	-	1
Manufacturing	6 145	6 115	7 051
Electricity	-	-	1
Construction	2 400	1 400	950
Hotels and restaurants	400	200	210
Transport and communication	400	200	103
Financing and business services	150	200	201
Community and social services	200	100	100
Total	9 795	8 215	8 617

30. The number of female workers amounted to 4,903 as opposed to 3,714 male workers in 1997.

31. The number of unemployed persons was 29,800 (13,100 males and 16,700 females) at mid-1997, an increase of 3,000 over the 1996 figure. The unemployment rate was 5.5 per cent in 1996 and 6 per cent in 1997.

32. The following table provides a breakdown of the labour force by group and sex, 1995-1997:

(thousands)

Years	Male			Female		
	1995	1996	1997	1995	1996	1997
Mauritian labour force	321.7	326.0	331.7	153.3	158.6	164.5
Foreign labour force	5.6	4.2	4.0	4.2	4.0	5.3
Total	327.3	330.2	335.7	157.5	162.6	169.8

33. Industrial relations are still marked by dialogue and consultation among trade unions, employers' organizations and Government. Wage earners are entitled to various types of protection under many Acts such as the Labour Act, the Industrial Relations Act, the Occupational Safety, Health and Welfare Act, the Export Processing Zones Act and the Workmen's Compensation Act.

34. The Permanent Arbitration Tribunal (PAT) and the Industrial Court deal with industrial disputes. Other institutions such as the Industrial Relations Commissions and the National Remuneration Board (NRB) promote good industrial relations and review wages in certain sectors.

35. The Occupational Safety, Health and Welfare Act of 1988, enacted to promote a safe and healthy working environment, has contributed to a large decline in the number of industrial accidents. From 10,234 industrial accidents in 1991, the figure declined to 5,645 in 1996.

Right to housing

36. Housing surveys are carried out every 10 years and the next one is due to start in 2000. The 1990 figures showed that there were 223,821 housing units in Mauritius and it is clear that this figure has greatly increased in recent years.

37. The number of homeless people is difficult to estimate but certain figures point to around 200. The Ministry of Social Security together with the Abbé Pierre Foundation work to provide shelters and meals to the homeless.

38. The National Housing Development Company Ltd. (NHDC), set up in 1992, has built 5,918 housing units. These units are meant for low-income groups whose income is between Rs 3,000 and Rs 6,000 per month; 704 housing units have been built for middle-income groups.

Right to health and social security

39. Medical care provided by the State is free of charge for citizens of Mauritius. In addition, there are more than 20 private clinics. Health centres are also numerous on the island.

40. Section 94 of the Constitution, the National Pensions Act and the Statutory Bodies Pensions Act provide for a pension to all wage earners whether in the public or the private sector.

41. The Training and Employment and Disabled Persons Act was enacted in 1996 to prevent discrimination against disabled persons. It is now an offence for an employer to discriminate against any disabled person in relation to advertisement of and recruitment for employment, and the determination or allocation of wages, salaries, pensions and other matters relating to employment. Moreover, the Act provides that all employers having more than 35 employees must have 3 per cent of their work force constituted of disabled persons.

Right to education and training

42. The Constitution and the Education Act provide for compulsory general education for all children. It is an offence under the Education Act for a parent to refuse or neglect, without reasonable cause, to cause his child to attend school regularly. State education up to university level is free. Recent years have been marked by the emergence of private schools (primary and secondary) which charge monthly fees.

43. The number of primary schools totalled 283 in 1997 for a school population of 127,109: 221 schools were administered by the Government, 51 by the Roman Catholic Education Authority, 2 by the Hindu Education Authority and the remaining 9 were private unaided schools. Admission to primary schools is based on a catchment-area system whilst admission to secondary schools is based on performance at the Certificate of Primary Education (CPE) examination.

44. In 1997 there were 130 secondary schools in Mauritius for 93,839 students: 29 schools were administered by the Government and 101 were confessional or private (aided or unaided).

45. Enrolment in secondary schools in 1997 totalled 93,839 (45,706 males and 48,133 females). Secondary school enrolment shows an upward trend of 1 per cent as compared with the 1996 figures.

46. The Industrial and Vocational Training Board (IVTB), set up in 1988 to promote the training or apprenticeship of persons to be employed in technical and vocational fields, has been quite successful. In 1997, it was running 17 centres with 1,211 full-time students and 2,355 part-time students. In 1997, 20 basic secondary schools and 2 private unaided schools offered technical and vocational education to pupils not attending the general secondary schools. These schools enrolled 873 boys and 318 girls.

Right to participate in cultural activities

47. Chapter II of the Constitution guarantees the exercise of this right.

48. Mauritian society is pluricultural and plurilingual.

49. The Government gives extended support to all cultural forms of expressions to ensure unity and cohesion in society. In this context four cultural centres have already been established, namely the Indira Gandhi Cultural Centre, the Chinese Cultural Centre, the Islamic Cultural Centre and the African Cultural Centre. In this context, the foundation stone for the Nelson Mandela Centre for African Culture was laid in October 1998.

50. A National Drama Festival has been held every year for decades. The Festival covers 10 languages, namely English, French, Hindi, Bhojpuri, Tamil, Telegu, Marathi, Mandarin, Urdu and Creole.

51. Seven Asian languages are offered to pupils in primary school. These languages are Hindi, Tamil, Telegu, Marathi, Mandarin, Urdu and Arabic. The primary school pupils studying any one of these languages numbered 81,695 or 60 per cent of the total enrolment in 1997.

Right of access to any place or service intended for use by the general public

52. All Mauritian citizens and all foreigners residing in or visiting Mauritius enjoy all services intended for the public on an equal footing.

Article 7

53. Under the Constitution no person is compelled to receive religious instruction against his will when he attends a place of education. Furthermore, the Constitution protects the right to disseminate religious instruction in the course of education and no religious, social, ethnic or cultural association is prevented from establishing and maintaining school at its own expense.

Culture

54. The Constitution provides for the protection of the freedom of assembly and association. The State encourages activities of cultural associations. The Ministry of Arts and Culture organizes various cultural events every year. Thus, in the context of the celebration marking the four hundredth anniversary of the Dutch landing in Mauritius, a Dutch Section of the Naval and Historical Museum was opened in September 1998.

55. Similarly the "Journée Internationale Créole 98" was celebrated with two four-day activities in October 1998.

56. The Fund for the Promotion of Arts and Culture exists since 1986 and is engaged in promoting the various components of Mauritian arts and culture. Amongst the various activities of the Fund was the exhibition on Indian immigration held in November 1998. The Fund has also contributed financially to the printing of a book entitled Stepping Stone of Immigrants - Aapravasi Ghat: The Site and Its History.

Articles 8 and 14

57. The Republic of Mauritius has taken note of the recommendation by the Committee that it ratify the amendments to article 8, paragraph 6, of the Convention and make the declaration under article 14 of the Convention. Both matters are being looked into closely.

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REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth report of States parties due in 1999

Addendum

Tonga*

[17 March 1999]

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* This document contains the fourteenth report, due on 17 March 1999. For the eleventh, twelfth and thirteenth reports of Tonga, submitted in one document, and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/319/Add.3 and CERD/C/SR.1298.

GE.99-41245 (E)

Introduction

1. The State party has considered and noted the Committee's concluding observations in its eleventh, twelfth and thirteenth periodic reports (CERD/C/304/Add.63) and, as requested by the Committee, will endeavour in the present report to comment on those observations and to provide further information as requested by the Committee.

I. COMMENTS ON THE CONCLUDING OBSERVATIONS OF THE COMMITTEE

A. Positive aspects

2. The State party endorses the Committee's view that presenting a periodi report regularly is sometimes difficult for Tonga, a country of limited resources. However, the Government is still determined to meet its obligatio to present periodic reports under the Convention.

3. The State party welcomes the Committee's satisfaction with the prohibition of the practice of racial discrimination and the provision for equal rights for all people in Tonga as provided for in the Constitution. There have been no amendments to the Constitution or any legislation that in any way threatens these principles.

4. The State party also reports that non-Tongans continue to enjoy and participate in the general life in Tonga without any significant hindrance or restrictions. Non-Tongans participate in social, cultural and religious organizations and activities throughout Tonga. Moreover, the State party reports that the provisions in the Constitution allowing any individual to lodge complaints about discrimination on racial grounds before the courts still exist, and their existence has not been threatened by any amendments to the Constitution nor by any new legislation. To date there have been no cour cases involving racial discrimination.

B. Principal subjects of concern

5. Comments on the concluding observations of the Committee on the principal subjects of concern are embodied in this part of the report. Each observation will be dealt with separately.

1. "The report does not contain sufficient information that would allow the Committee to assess the level of implementation of the Convention." (para. 6)

6. The State party has provided in this report the information that the Committee has requested, and it is the State party's hope that the Committee will be able to assess better the level of implementation of the Convention i Tonga. However, as stated in the previous report and as repeated in this report, the current legislative, judicial, administrative framework of Tonga provides for the implied implementation of the Convention. The State party thus feels that the lack of express implementation of the Convention does not disadvantage persons of non-Tongan ethnic origin. In other words, the spirit

of the Convention exists within the current legal framework of Tonga. Simply put, the State party does not practise, condone, or encourage the practice of racial discrimination.

2. "Concern is expressed, in particular, at the lack of legislation intended to enforce the provisions contained in article 4 of the Convention and at the statement contained in the report that Tonga has no express policy on the elimination of racial discrimination." (para. 7)

7. The State party accepts that it has not implemented any legislation which specifically enforces article 4 of the Convention. However, the lack of any specific legislation is attributable to the following factors which exists in Tonga:

(a) Tonga's population is very homogeneous, with members of non-Tongan ethnic groups forming around 3.7 per cent of the population throughout Tonga;

(b) Racial discrimination is not heard of in Tonga;

(c) The Constitution of Tonga provides that there shall be one law regardless of various differences, including race. To date, there has been no court case based on racial discrimination;

(d) No organization or propaganda that practices, promotes or incites racial discrimination exists in Tonga.

3. "In view of the ethnic characteristics of the population, the structure of power in the country and the configuration of the Legislative Assembly, it is regretted that the State party has not provided detailed information about the implementation of the provisions of article 5 of the Convention vis-à-vis the different ethnic groups." (para. 8)

8. Under the Constitution and the Laws of Tonga, every person in Tonga, be they Tongan or non-Tongan, is entitled to the following "rights":

(a) The right to equal treatment before all organs administering justice (article 5 (a)). This right is provided for by section 4 of the Constitution (see annex I);

(b) The right to security and protection of the State from violence from any person (article 5 (b)). This right is provided for by section 6 of the Police Act (Cap. 35) of the Laws of Tonga (see annex I);

(c) The right to vote and to stand for elections. Under article 64 of the Constitution only Tongan subjects may vote. This includes persons of non-Tongan ethnic origin who have become naturalized Tongans. This is the common principle throughout other countries;

(d) The civil rights listed in article 5 (d) (i) to (ix):

(i) Right to freedom of movement and residence within the border of the State. There is no express provision guaranteeing freedom of movement; however, every person in Tonga is free to travel anywhere within the Kingdom without any restrictions;

(ii) Right to leave any country. There is no express provision for this right; however, every person is entitled to hold a passport and travel in and out of Tonga. Non-Tongans also enjoy the right to travel freely in and out of Tonga, unless they breach the law, as in every other country;

(iii) Right to nationality. Under article 29 of the Constitution (see annex I) any non-Tongan who has resided in Tonga for five years or more may, with the consent of the King, become a naturalized Tongan;

(iv) Right to marriage and choice of spouse. A non-Tongan may marry a Tongan only if he or she receives the written consent of the Principal Immigration Officer under section 10 (2) (c) of the Immigration Act (Cap. 62) of the Laws of Tonga (see annex I). As reported in earlier reports, this does not breach a persons right to marry or choose his or her spouse;

(v) Right to own property alone as well as in association with others. There is no express provision for this right; however, non-Tongans may own property in Tonga, except for land which they may only lease from Tongans. This is provided for by article 104 of the Constitution (see annex I);

(vi) Right to inherit. Non-Tongans who have become naturalized Tongans have the same rights and privileges as native-born subjects of Tonga, except that they shall not be entitled to the rights of hereditary tax allotments under article 29 of the Constitution;

(vii) Right to freedom of thought, conscience and religion. This is provided for by article 5 of the Constitution (see annex I);

(viii) Right to freedom of opinion and expression. This is provided for by article 7 of the Constitution (see annex I);

(ix) Right to freedom of peaceful assembly and association. There is no express provision; however, every person is free to meet peacefully and to associate themselves with any other person;

(e) The economic, social and cultural rights listed in article 5 (e) (i)-(vi):

(i) Right to work, free choice of employment, just and favourable working conditions, equal pay for equal work. There is no express provision; however, every person is entitled to all these rights, and they are provided for by all employers in Tonga;

(ii) Right to form and join trade unions. This is provided for by section 5 of the Trade Union Act (Cap. 48) of the Laws of Tonga (see annex I);

(iii) Right to housing. There is no express provision for this right; however, there is no homeless person in Tonga. Non-Tongans may rent homes from Tongans, and the real estate business is fast becoming an alternative source of income for Tongans. There is restriction in constructing or renting a house in Tonga;

(iv) Right to public health, medical care, social security and social services. The State provides free health care to the public;

(v) Right to education and training. Every person between the age of 6 and 14 must attend school under section 52 (a) of the Education Act (Cap. 86) of the Laws of Tonga (see annex I). Both Tongan and non-Tongans are free to attend any school of their choice;

(vi) Right to equal participation in cultural activities. There is no express provision on this right; however, article 1 of the Constitution (see annex I) guarantees freedom to all. As stated earlier in this report and in the previous report, non-Tongans freely enjoy participation in not only cultural activities, but also social and economic activities;

(f) The right to access any place or service intended for use of the general public (article 5 (f)). Even though there is no express provision, no person, whether Tongan or non-Tongan, is restricted from access to any place or service intended for the general public.

4. "It is a matter of concern that as the Convention has not been incorporated into the domestic law, it cannot be invoked in the courts." (para. 9)

9. The State party accepts and notes this concern. Since receiving the Committee's concluding observations, no action has been initiated to incorporate the Convention into domestic law. The State party feels that the current legal framework of Tonga, including the Constitution, does provide for and protect the rights protected by the Convention.

C. Suggestions and recommendations

1. "The Committee recommends that the next report provide updated information about the population, in conformity with paragraph 8 of the Committee's general guidelines. The report should also contain detailed information about the practical implementation of the Convention, especially articles 4 and 5." (para. 10)

10. Annex 2 to this report contains a table which provides an update on the population. This information was collected after the last census held in Tonga in 1996. this information is based on the ethnic origin of the population.

2. "The Committee recommends that the State party provide 'a core document' as soon as possible." (para. 11)

11. The State party submits the present report as the "core document" requested. However, the State party would welcome any further request for further or more detailed information in relation to this report.

3. "The Committee recommends that subjects intended to promote tolerance among different ethnic groups be incorporated in school curricula." (para. 12)

12. The State party accepts and takes note of the recommendation. The State party will consider initiating action on the recommendation.

4. "The Committee suggests that, in preparation of its next periodic report, the Government of Tonga may wish to avail itself of the technical assistance provided under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights." (para. 13)

13. The State party accepts and notes the suggestion. The State party reports that it will look into availing itself of this assistance.

5. "The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention." (para. 14)

14. The State party notes the recommendation.

6. "It is noted that the State party has not made the declaration provided for in article 14 of the Convention and some members of the Committee requested that the possibility of such a declaration be considered." (para. 15)

15. The State party accepts that it has not made the declaration under article 14 of the Convention. However, it requests that the Committee give the State party time to consider the possibility of making such a declaration.

7. "The Committee recommends that the State party's periodic report, due on 17 March 1999, address all the points raised in the present observations. It also expresses the hope that a delegation be present when the Committee considers the report." (para. 16)

16. The State party requests that it should not commit itself to sending a delegation. The State party will, however, endeavour to send a delegation, but this will depend on the availability of financial resources.

Annex I

RELEVANT ARTICLES OF THE CONSTITUTION AND LAWS OF TONGA

Article 1 of the Constitution of Tonga

"Since it appears to be the will of God that man should be free as He has made all men of one blood therefore shall the people of Tonga and all who sojourn or may sojourn in this Kingdom be free forever. And all men may use their lives and persons and time to acquire and possess property and to dispose of their labour and the fruit of their hands and to use their own property as they will."

Article 4 of the Constitution of Tonga

"There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land."

Article 5 of the Constitution of Tonga

"All men are free to practise their religion and to worship God as they may deem fit in accordance with the dictates of their own consciences and to assemble for religious service in such places as they may appoint. But it shall not be lawful to use this freedom to commit evil and licentious acts or under the name of worship to do what is contrary to the law and peace of the land."

Article 7 of the Constitution of Tonga (as amended by the Constitution (Amendment) Act 1990)

"It shall be lawful for all people to speak and write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press for ever but nothing in this clause shall be held to outweigh the law of defamation or the laws for the protection of the King and the Royal Family."

Article 29 of the Constitution of Tonga

"Any foreigner after he had resided in the Kingdom for the space of five years or more may with the consent of the King take the oath of allegiance and he may be granted Letters of Naturalization and all naturalized subjects shall have the same rights and privileges as native born subjects of Tonga with the exception that they shall not be entitled to the rights of hereditary tax allotments."

Article 64 of the Constitution of Tonga

"Every Tongan subject of twenty-one years of age or more who being a male and not a noble pays taxes and being a male or female can read and write and is not insane or imbecile and is not disabled by the twenty-third clause shall be entitled to vote in an election for

representatives of the people to the Legislative Assembly and on the day appointed for election shall be exempt from summons for debt."

Article 104 of the Constitution of Tonga

"All the land is the property of the King and he may at pleasure grant to the nobles and titular chiefs or matabules one or more estates to become their hereditary estates. It is hereby declared by this Constitution that it shall not be lawful for anyone at any time hereafter whether he be the King or any one of the chiefs or the people of this country to sell any land whatever in the Kingdom of Tonga but they may lease it only in accordance with this Constitution and mortgage it in accordance with the Land Act. And this declaration shall become a cogent binding on the King and chiefs of this Kingdom for themselves and their heirs and successors for ever."

Section 6 of the Police Act (Cap. 36) of the Laws of Tonga

"The Force shall be employed in and throughout the Kingdom for the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged, and the serving and execution of such process as they are required by law to serve and execute."

Section 5 of the Trade Union Act (Cap. 48) of the Laws of Tonga

"5. (1) No trade union or any member thereof shall perform any act in furtherance of the purposes for which it has been formed unless such trade union has first been registered.

(2) Any trade union or any officer or member thereof who contravenes the provisions of this section shall be guilty of an offence punishable with a fine not exceeding $50."

Section 10 (2) (c) of the Immigration Act (Cap. 62) of the Laws of Tonga

"10. ...

(2) A visitor's permit shall entitle a visitor to remain in the Kingdom of Tonga for a period not exceeding 6 months and shall be subject to the conditions that the visitor during his stay in the Kingdom -

(a) shall not take up employment in the Kingdom without the permission in writing of the Principal Immigration Officer; and

(b) shall not behave in a manner prejudicial to peace, good order, good government or public morals; and

(c) shall not marry without the consent in writing of the Principal Immigration Officer; and

(d) shall furnish such security in cash or otherwise as may be demanded by the Principal Immigration Officer.

(3) Any person aggrieved by the refusal of the Principal Immigration Officer to issue to him a visitor's permit under the provisions of this appeal by petition in writing to the Prime Minister, whose decision thereon shall be final."

Section 52 (a) of the Education Act (Cap. 86) of the Laws of Tonga

"52. In this part of this Act:

(a) 'compulsory school age' means any age between 6 years and 13 years and accordingly every person shall be deemed to be of compulsory school age if he has attained the age of 6 years and has not attained the age of 14 years;

..."

Annex II

POPULATION OF TONGA BY SEX AND ETHNIC GROUP

Sex/Division	Total	Tongan	Part-Tongan	European	Fijian	Samoan	Indian	Chinese	Japanese	Other Pacific Is	Other Asian	Not elsewhere sp
MALE AND FEMALE												
KINGDOM OF TONGA	97 784	94 288	1 732	676	223	103	75	55	29	256	325	12
Tongatapu	66 979	64 193	1 378	517	194	81	61	51	26	179	269	10
Vava'u	15 715	15 257	242	124	10	13	3	-	1	22	42	1
Ha'apai	8 138	8 029	46	27	15	5	-	2	-	6	7	1
'Eua	4 934	4 809	58	7	4	4	-	2	2	47	1	-
Niuas	2 018	2 000	8	1	-	-	1	-	-	2	6	-
Nuku'alofa	22 400	20 964	574	324	114	37	70	42	21	110	136	8
Greater Nuku'alofa	31 404	29 624	712	408	133	46	81	47	24	134	187	8
MALE												
KINGDOM OF TONGA	49 615	47 797	866	383	122	41	43	34	19	128	176	6
Tongatapu	33 753	32 311	679	295	109	29	40	31	19	86	149	5
Vava'u	8 055	7 810	134	67	3	8	2	-	-	10	21	-
Ha'apai	4 109	4 045	24	16	7	4	-	2	-	5	5	1
'Eua	2 642	2 565	25	4	3	-	-	1	-	26	-	-
Niuas	1 074	1 066	4	1	-	-	1	-	-	1	1	-
Nuku'alofa	11 118	10 349	276	192	59	17	35	27	17	63	79	4
Greater Nuku'alofa	15 712	14 773	342	241	70	19	40	29	19	69	106	4
FEMALE												
KINGDOM OF TONGA	48 169	46 491	866	293	101	62	42	21	10	128	149	6
Tongatapu	33 226	31 882	699	222	85	52	41	20	7	93	120	5
Vava'u	7 660	7 447	108	57	7	5	1	-	1	12	21	1
Ha'apai	4 029	3 984	22	11	8	1	-	-	-	1	2	-
'Eua	2 310	2 244	33	3	1	4	-	1	2	21	1	-
Niuas	944	934	4	-	-	-	-	-	-	1	5	-
Nuku'alofa	11 282	10 615	298	132	55	20	35	15	4	47	57	4
Greater Nuku'alofa	15 692	14 851	370	167	63	27	41	18	5	65	81	4

UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic reports of States parties due in 1999

Addendum

Netherlands*

[27 April 1999]

* This document contains the thirteenth and fourteenth periodic reports submitted in one document, due on 9 January 1997 and 1999, respectively. For the tenth, eleventh and twelfth reports of the Netherlands, submitted in one document, and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/319/Add.2 and CERD/C/SR.1252-1253, 1272.

The information submitted by the Netherlands in accordance with the consolidated guidelines for the initial part of the report of States parties is contained in HRI/CORE/1/Add.66, 67 and 68.

The annexes to the report submitted by the Government of the Netherlands may be consulted in the files of the secretariat.

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Introduction

1. In pursuance of article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the present report by the Kingdom of the Netherlands is submitted in accordance with the general guidelines adopted by the Committee in 1980, as revised at the 984th meeting on 19 March 1993. For the principal demographic, economic and social indicators and a description of the Kingdom's constitutional system, reference is made to the core documents of the Kingdom of the Netherlands (HRI/CORE/1/Add.66, 67 and 68). This report covers the period 1996 and 1997 and follows the consolidated tenth, eleventh and twelfth periodic reports, which were presented to the Committee in March 1997 and which covered the period up to December 1995 (CERD/C/319/Add.2).

2. This report also contains a number of reactions to the concluding observations of the Committee (CERD/C/304/Add.46) emanating from the consideration of the tenth, eleventh and twelfth consolidated reports, which took place in Geneva during the fifty-second session of the Committee in March 1998.

3. This report covers the entire Kingdom, i.e. the Netherlands, European part, the Netherlands Antilles and Aruba.

Part One

REACTIONS TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE (CERD/C/304/Add.46)

Paragraph 8

4. The Committee noted with interest that the draft Benefit Entitlement Act, then expected to come into force in July 1998 (which it has), contained provisions aimed at narrowing the existing differences in the state of health between members of ethnic and national minorities and the rest of the population.

5. The Netherlands Government wishes to note that there is no relationship between the elements of the Matching Bill that seek to ensure that "essential health-care services" remain accessible to persons who reside in the country illegally and research conducted to gain better insight into the differences in health between different socio-economic strata of society, where ethnic or national origins could play a role. These are two different subjects that were both dealt with during the consideration, but which are otherwise separate issues.

Paragraph 9

6. Under concluding observation 9 the Committee expressed its concern at the racist utterances of certain organizations, political parties and individuals. According to the reports submitted by Dutch non-governmental organizations, the public prosecution service's 1993 guidelines are not being observed consistently. The Committee recommended that the police and the public prosecution service take more active and effective steps to combat racism and to investigate and prosecute cases of discrimination.

7. The police make a constant effort to tackle discrimination. The Board of Police Commissioners has appointed an officer with specific responsibility for combating discrimination. The officer concerned acts as a national contact point, and one of his chief duties is to register incidents motivated by racism. On 20 February 1997, the National Bureau against Racism and the Dutch Police Training School organized a conference on cooperation between the police, the public prosecution service and anti-discrimination centres. The Amsterdam-Amstelland police force has introduced a system which enables officers to record whether an offence is thought to have been racially motivated. The possibility of introducing this system nationwide is now being considered. A number of police forces have launched projects and activities aimed at countering discrimination and raising awareness of the problem. One example is a project recently launched by the Rotterdam-Rijnmond police force in cooperation with RADAR, the regional anti-discrimination centre, in which the police, the public prosecutions service, the local authorities and RADAR work together to record incidents of and tackle racism and discrimination.

8. In 1996, the Temporary Scientific Committee on Minorities Policy (TWCM) published a report recommending measures to tackle prejudice, discrimination and racism. The Government made its position on the report known to the Lower House of Parliament on 10 April 1997. It revised its position on 21 October 1997 following questions from the Permanent Committee for the Interior concerning measures to prevent discrimination and racism in various policy fields, such as education, the labour market and sport. The Government responded by identifying the measures it proposed to take, which included the structural integration of intercultural teaching in school curricula.

9. More information as to the judicial measures taken in relation to the concerns expressed in this concluding observation is contained in Part Two, article 4 of the present report.

Paragraph 11

10. In its concluding observation the Committee expressed its concern about the entry and control of foreigners, which could lead to racial discrimination. The information contained in Part Two, under article 5 (b), of the present report should be read in conjunction with this concern.

Paragraph 12

11. The Committee expressed its concern at the disproportionately low rate of participation of minorities in the labour market and recommended further action to ensure and promote equal opportunity in economic and social life.

12. Between 1994 and 1997, the number of employees from ethnic minorities in the total workforce rose by 15 per cent, almost double the rate of increase for the indigenous Dutch population. Net participation, i.e. the number of people in employment from the various minority groups, expressed as a percentage of the total population in the 15 to 64 age group, rose in particular among people of Surinamese, Turkish and Moroccan origin. Net participation among the Surinamese group rose the fastest, and in 1997 it was only 6 per cent behind the increase among participants of Dutch ethnic origin.

13. The Job Seekers Employment Act (WIW) which entered into force on 1 January 1998 gives local authorities several instruments to motivate unemployed people to enter the labour market. For instance, they can provide training and organize secondments or work experience placements. The Act has been in force for only a short time and it is still too soon to assess its effects. On 1 July 1998, the WIW information scheme entered into effect. This scheme requires local authorities to keep records of the jobs and work experience placements they provide, and of the characteristics of the persons involved.

14. The Employment Scheme for Long-Term Job Seekers, though not specifically geared to ethnic minorities, has also been important for this group. Most of its placements, which are for semi-skilled or unskilled personnel, are in the four major cities (Amsterdam, Rotterdam, The Hague and Utrecht).

15. For further information reference is made to Part Two, E, article 5 (e) (i), Employment policies, in particular with regard to the Act Governing the Promotion of Proportional Participation in the Employment.

Paragraph 13

16. The Committee expressed its concern at the under-representation of ethnic minorities in most areas of education, particularly in higher education, and recommended that more attention be given to providing students from ethnic minorities at all levels of education, as appropriate, instruction in their mother tongue.

17. The Municipal Compensatory Policy (Education) Act, which entered into effect on 15 May 1997, empowers local authorities to pursue their own policies to combat educational deprivation and entitles them to claim a targeted grant for this purpose. Schools receiving such grants are required to use them in accordance with local authority schemes to combat educational deprivation - schemes that have the effect of promoting the integration of ethnic minorities. This enables local authorities to pursue the aims of the National Policy Framework (LBK), which are to give children an optimal start at school (for instance by ensuring that their Dutch is up to standard), to reduce the drop-out rate and the number of referrals to special schools, to bring more children from disadvantaged groups into the school system, and to improve the registration of local trends in education.

18. Generally speaking, the position of students of higher education from minority groups has improved. However, it should also be said that members of ethnic minorities who receive their primary education in the Netherlands achieve better results in subsequent types of education than counterparts who attended primary schools in their countries of origin. Although this is an encouraging trend, it is vital for ethnic minority children to receive more effective education, particularly since relatively few go on to higher education. On 16 September 1997, the speaker of the Lower House of Parliament was presented with the Higher Education and Research Plan (HOOP 1998), which highlights the position of ethnic minorities in higher education. At present, they make up an estimated 4 per cent of the total student population in higher professional education (HBO) and 2 per cent of university students. There are differences, moreover, per ethnic group: a relatively higher number of Antillean and Surinamese students enrol for higher education than Turks or Moroccans. HOOP 1998 aims to improve the position

of students from ethnic minorities and to reduce the drop-out rate. For this reason, it has been agreed with the Association of Netherlands Universities (VSNU) and the Council on Higher Professional Education that the policy to promote integration will be incorporated in the review protocol so that the position of these students in higher education is routinely assessed in external quality control procedures. It was also agreed that educational institutes themselves would take measures to reduce the drop-out rate among these students.

19. The Expertise Centre for Ethnic Minorities in Higher Education (ECHO) became operational in 1995. Now, two years on, the student population is more diverse and also more aware. ECHO is responsible for projects, services and innovation. In 1995, most of its time was devoted to projects, while in 1996, services (networking and information) and innovation (new policy) started to gain more ground. In 1996, special attention was paid to university education, for which there were fewer projects than for higher professional education. Through its projects, ECHO has gained a better understanding of target areas in the policy to promote integration. In 1997, the Centre devoted special attention to a second round of projects, which included 11 projects for first-year university students. They were designed, for instance, to give students extra assistance in their first four months at university, to supplement the standard introduction programme with special introduction programmes for Antillean, Surinamese and Aruban students, and subsequently to help them find jobs. Within the framework of HOOP 1998, it was agreed with ECHO that a survey would be conducted among students to obtain more comprehensive and more reliable information about the participation of and drop-out rate among ethnic minorities, and about the particular problems they encounter in higher education. The Government wishes to see ECHO remain active.

20. With regard to more attention to the provision of instruction to students from ethnic minorities in their mother tongue, such instruction should not come at the expense of that directed at the mastery of the language of instruction (i.e. Dutch). Inadequate mastery of the latter largely explains the high drop-out rate at the lower levels of education (and widespread unemployment among the groups concerned). In any case, pupils and students at all levels of education can opt to spend additional time learning their mother tongue, and children in secondary schools have the opportunity to choose to study their own language rather than another subject on the curriculum.

Paragraph 14

21. The Committee requested more information on the implementation of the Equal Treatment Act and on the Equal Treatment Commission's proposal that its competence be extended to improve its effectiveness in countering discrimination.

22. According to the guidelines for core documents (HRI/CORE/1), information contained in the core document need not be repeated in the reports required under the provisions of the various treaties. Hence, the report to CERD published in March 1997 refers readers to the core document. The core document also contains information on the Commission's implementation of the Equal Treatment Act.

23. The following may be said in response to the proposal that the Equal Treatment Commission's competence be extended. The Commission's tasks are set out in the Equal

Treatment Act. These tasks can only be revised, should there be reason for doing so, by amending the provisions of the Act. The Act itself provides that its terms be reviewed every five years. It is being reviewed at present by an independent board, which will report its findings. Once the Equal Treatment Commission has received the board's review report, it will publish its own findings. These two reports, accompanied by a government position paper, will be submitted to Parliament, probably in late December 1999 or early 2000. If the review report gives reason to expand or otherwise modify the Commission's powers, the Government will put the matter before Parliament.

Paragraph 16

24. The Committee recommended that the next report have consistent nomenclature and classification of ethnic and national minorities and that more information on the Frisian minority be provided.

25. Given that the terms used to refer to ethnic and national minorities are not consistent in Dutch legislation, it is difficult for the Netherlands to use the same definitions in all its reports. The Aliens Act, the Newcomers Integration Act, the Employment of Minorities (Promotion) Act and the Emigration Act define the terms "aliens", "newcomers", "minority group" and "emigrants" differently, and it is therefore impossible to employ unambiguous terminology.

26. The Frisians are a linguistic minority in the Netherlands, not an ethnic minority. There is no reference in the Convention to discrimination on the grounds of "language". This is why the Frisian minority has not been mentioned in earlier reports. The following information is provided in response to the Committee's request.

27. Frisian is spoken in the Dutch province of Fryslân, which has a population of 600,000. The Council of Europe Framework Convention for the Protection of National Minorities, which the Netherlands has signed but not yet ratified, does cover linguistic minorities, and therefore speakers of Frisian. The Convention requires parties to create appropriate conditions to enable members of national minorities to express, protect and develop their ethnic, cultural, linguistic and religious identity.

28. In 1996, the Government of the Kingdom of the Netherlands informed the Council of Europe of its adoption of the European Charter for Regional or Minority Languages for the Netherlands. It was the fourth member State to do so. States that adopt the Charter are required to implement at least the provisions of its Part II. The Netherlands has undertaken to do so in respect of the following regional or minority languages spoken in its territory: Frisian, the Lower Saxon languages, Yiddish and the Romany languages. As far as Frisian is concerned the Netherlands has undertaken to apply 48 provisions which, in brief, relate to education, the courts, the administrative authorities and public services, the media, cultural activities and resources, economic and social life, and international exchanges. The member States that are bound by this commitment are required to publish regular reports on the above matters. The Ministry of the Interior and Kingdom Relations has requested the Fryske Academie to prepare a schedule of the measures the Netherlands has taken in fulfilment of its obligations in respect of the Frisian language. This schedule is not yet available.

Part Two

THE NETHERLANDS (EUROPEAN PART OF THE KINGDOM)

I. INFORMATION RELATING TO ARTICLES 1 TO 7 OF THE CONVENTION

A. Article 1

1. Demographic data for the period 1996/97

29. The ethnic groups targeted by integration policy include Dutch nationals as well as others. In 1996, an estimated 2,622,000 people in the Netherlands belonged to an ethnic minority group (almost 17 per cent of the total population); the figure for 1997 was estimated to be 2,677,000 (17.2 per cent).

2. Code of conduct

30. In July 1994, the Ministry of the Interior and Kingdom Relations introduced an internal anti-discrimination code of conduct with rules, guidelines and proposals covering a wide variety of situations. The code was drawn up in consultation with senior officials and includes procedures for monitoring compliance. The aim is to enable legislation against discrimination to be applied more effectively, to heighten awareness of discriminatory behaviour and to expose any discriminatory effects of policy. In this Ministry, a special committee has been appointed to hear complaints from its own employees who feel they have been discriminated against. Complaints can be filed up to a year after an incident. If a complaint is declared admissible, the parties involved are heard. The committee reports its findings to the competent authority within the Ministry and recommends an appropriate measure or sanction, such as a job transfer, disciplinary measures or, in the last resort, dismissal. The competent authority is required to take a decision within four weeks. It is hoped that in the future all government bodies will draw up a code of conduct, in line with the recommendations of the Central Government Anti-Discrimination Forum, a body chaired by the Ministry of the Interior and Kingdom Relations.

B. Article 2

1. Paragraph 1 (a) to (c)

31. Every year, Parliament receives a report on minority policy, outlining the developments that have taken place in the preceding year and plans for the year ahead. The 1997 and 1998 reports stress the fact that minority groups should themselves encourage their members to participate actively in education and the labour market. At the same time, the indigenous population should give new population groups sufficient opportunity to do so. They must also accept minorities on an equal footing, thereby enabling them to take their place as equal members of society and as critical and empowered citizens who can take responsibility for

themselves and play an active civic role. As this demands a fundamental change of attitude, the policy to promote integration envisages long-term goals. Civil society organizations are in a position to influence trends in society, and therefore have a special role to play.

32. Organizations run by and for ethnic minorities ("self-help organizations") play a role in promoting their members' participation in the life of society. Subject to certain conditions, the government grants subsidies under the Welfare Policy Subsidy Scheme (1996) to enable national organizations of this kind to exchange information and provide their own communities with information on matters such as the consequences of government measures. The scheme will be evaluated in 1998/99 and the findings discussed in the next Kingdom report.

2. Paragraph 1 (d)

33. Erratum: the report on "Applicability of psychological tests to ethnic groups" referred to in paragraph 27 of the previous report (CERD/C/319/Add.2) was not issued by the Ministry of Social Affairs and Employment but by the National Bureau against Racism (LBR), a non-governmental organization.

3. Paragraphs 1 (e) and 2

(a) Affirmative action

34. The Netherlands pursues an affirmative action policy in respect of women, minority groups and the disabled, as provided for by legislation on equal treatment (the Equal Treatment Act and the Equal Pay Act). However, the law does not oblige anyone to pursue such a policy. In accordance with the principle of proportionality, the type of priority that may be accorded depends on the degree of disadvantage. At most, it may involve reserving jobs for a particular group and recruiting staff from the target groups only.

35. The judgement of the European Court of Justice in the Kalanke case of 1995 triggered a debate on affirmative action. The judgement in the Marschall case helped to clarify the matter, although a number of questions still remain. The Badeck case, which the Court is hearing at present, may serve to resolve the issue. Once the Court's judgement is known, the Netherlands Government will consider whether the affirmative action policy for women and other groups needs to be amended.

(b) Women from minority groups

36. The Women and Minorities Employment Bureau referred to in paragraphs 39 and 40 of the previous report (CERD/C/319/Add.2) was fully privatized in 1997.

(c) Equal opportunities policy

37. The conviction that the optimum use of the distinctive qualities associated with diversity enriches society is the principle that underpins equal opportunity policy. A significant potential source of such qualities is to be found in the ethnic and cultural diversity that characterizes the

population of the Netherlands. A think-tank comprising black, migrant and refugee women and government representatives was set up to discuss ways of using this diversity, on the basis of four specific themes:

(a) Women refugees and access to the labour market;

(b) Diversity in child care;

(c) Entrepreneurial opportunities for women from ethnic minorities;

(d) Opting for technical courses.

38. The think-tank did not confine itself to developing policy ideas but also looked at ways of putting them into practice. It has now reached a number of conclusions and completed its activities. A possible follow-up is to be discussed with the policy departments of the relevant ministries.

(d) Support for equal opportunities

39. The AISA project was launched in 1994 to assist black, migrant and refugee women in their efforts to achieve equal opportunities. AISA is an association of national minority organizations, and it is subsidized by the Ministry of Social Affairs and Employment (Equal Opportunities Policy Coordination Department). The aims of the project are as follows:

(a) To generate ideas on the position of and equal opportunities for black, migrant and refugee women;

(b) To develop methods to ensure that these ideas are adopted by government authorities and community-based organizations;

(c) To create the conditions necessary to enable black, migrant and refugee women to take advantage of government policy and trends in Dutch society.

40. To achieve the above, a number of working meetings were organized and various publications appeared. The project was completed in late 1997 and was subsumed into the new equal opportunities support structure which had been reorganized at the suggestion of the State secretary responsible for coordinating equal opportunities policy.

41. The support structure continues to build upon the activities of AISA and three general women's organizations (Arachne, the Institute for Women and Work, and WEP International) under the slogan "E quality - experts in gender and ethnicity". The aim is to help renew policy and the equal opportunities process in society through activities carried out from a gender and ethnicity perspective that transcend sectoral restraints. The main themes are diversity, empowerment, citizenship and democracy, the redistribution of power and influence, work, care and income, image forming and the effects of power in a multicultural society, and information and communication technology.

(e) The Equal Opportunities Yearbook

42. The second Equal Opportunities Yearbook, published jointly by the Equal Opportunity Policy Coordination Department, Statistics Netherlands (CBS) and the Social and Cultural Planning Agency (SCP), appeared in April 1998. The theme of the Yearbook is the combination of care and paid work, prompted by the activities of the committee of the same name. Ethnicity is also an important topic: black, migrant and refugee women and men are well represented in both the statistics and the interviews. The same will apply to the development of the equal opportunities monitor, which will use indicators to provide a clearer insight into the evolution of the equal opportunities process in a number of areas in 1998. As of 1999, the information provided by the monitor will be published in the Yearbook.

C. Article 4

1. Increases in the sentences imposed for discrimination

43. With reference to paragraph 9 of the concluding observations (CERD/C/304/Add.46), it should be noted that the Government has proposed to increase the maximum sentences to be imposed for structural forms of racial discrimination. This will necessitate amending the Criminal Code. Consideration is now being given to the way in which the proposal for heavier sanctions for systematic discrimination should be implemented in the Criminal Code.

2. Guidelines for discrimination cases

44. Criminal law is the last resort in the fight against discrimination. However, if the anti-discrimination legislation has clearly been breached, the public authorities must indeed resort to this weapon to protect the public. If the criminal law is to offer effective protection, it is essential that the authorities use it consistently and resolutely. The Guidelines for Discrimination Cases for the police and public prosecution service (Bulletin of Acts and Decrees 1997, 146) are intended to promote such application.

45. The Guidelines, which were updated and re-endorsed in September 1997, are based on an active investigation and prosecution policy. Their basic premise is that any violation of the anti-discrimination provisions in the Criminal Code will meet with a response under criminal law as soon as possible, providing that the technicalities of the case permit it. They also stipulate that in cases of crimes under ordinary law in which discrimination is a background factor, the public prosecution service must emphasize this aspect in its closing remarks and include it as an aggravating circumstance when deciding what sentence to demand.

46. The clause requiring the police to draw up a report on each individual complaint has been retained. The police can decide not to do this only after prior consultation with the public prosecution service, and only where the latter deems that no discrimination punishable under criminal law has taken place. The amended Guidelines note explicitly that it is important to have a clear picture of the nature and extent of local discrimination problems, and that registration - in particular with the police - is an important prerequisite for achieving this.

47. Regarding complaints about discrimination by the police itself, the Guidelines now provide that the same prosecution policy applies to police officers as to others. This means that in these cases too, action under the criminal law is the proper course to take.

48. The amended Guidelines took effect on 1 September 1997 and were given high-profile exposure within the public prosecution service. The chief public prosecutors discussed them in local tripartite consultations (i.e. with police and administrative authorities) and urged the police to set up a good registration system.

3. Collaboration between police, public prosecution service and anti-discrimination centres

49. On 20 February 1997 a conference took place under the auspices of the National Bureau against Racism (LBR) on the theme "Cooperation between the police, the public prosecution service and anti-discrimination centres". The conference was attended by a number of representatives of all these bodies.

50. It appeared from the list that the LBR drew up prior to the conference, and during the day itself, that in certain regions this cooperation is not all it should be. Cooperation with the parties involved, with each one taking responsibility for its share and adopting an active role, is an essential precondition for an effective fight against discrimination. Regular consultations between the various bodies involved, and including local government, are essential to the pursuit of a responsive investigation and prosecution policy.

51. The aim of the conference was therefore to formulate recommendations to improve cooperation between the public prosecution service, police and anti-discrimination centres. The recommendations centre, in brief, on the following themes:

(a) Commitment within the police, public prosecution service and anti-discrimination centres to acknowledging the seriousness of the problem, and the collective will to take measures to stamp it out;

(b) Professionalism, e.g. establishing long-term coordination points for discrimination cases within the public prosecution service and police;

(c) Improving the level of knowledge within the police and public prosecution service regarding the definition of discrimination and the relevant legislation and regulations;

(d) Registration, communication and structural consultations at regional and national level.

52. The amended Guidelines for Discrimination Cases also stress the vital importance of commitment. "The public prosecution service must be a credible and reliable ally in the fight against discrimination. [...] One condition for effective law enforcement is that both public prosecution service and police persist in an active approach. This will enhance the policy's credibility."

53. Both police and public prosecution service have liaison officers and/or coordination points for discrimination cases. Each public prosecutor's office at a district court has someone designated "discrimination public prosecutor", and each equivalent office attached to an appeal court has a "discrimination advocate-general". These 19 public prosecutors and 5 advocates-general responsible for discrimination cases meet annually to exchange knowledge and information. At these meetings, topical issues are discussed and recent judgements and changes in legislation reviewed. Partners such as the LBR or the National Security Service are invited to attend.

54. One of the matters discussed at the annual meeting in April 1997 was the outcome of a working conference. The lack of continuity with regard to occupancy of the post of "discrimination public prosecutor" was identified as an impediment to the development of expertise. This point was brought to the attention of the chief public prosecutors.

55. On the basis of the results of the February conference, it was also decided to strengthen ties between the public prosecutors and advocates-general with special responsibility for discrimination cases. They now meet at least twice a year to exchange knowledge and information. Partly to help gather and exchange knowledge and information, it was also decided to set up a National Discrimination Expertise Centre, which will be discussed below.

56. The amended Guidelines for Discrimination Cases emphasize yet again the importance of regular consultations between anti-discrimination centres, police and the public prosecution service. The past few years have seen a marked increase in collaboration between the different actors in the field. This is confirmed by a limited survey conducted by the National Office of the Public Prosecution Service (Parket Generaal; a support service for the Board of Procurators General, College van Procureurs Generaal). This survey revealed that nine districts had for some time been conducting structural consultations between the public prosecution service, police and anti-discrimination centres, and that five had incidental consultations (two of which had definite plans to shift to a structural scheme).

57. The results show that the parties concerned deem the consultations a good basis for cooperation, which can help tackle discrimination effectively. The regular meetings between police, public prosecution service and anti-discrimination centres focus on several key issues: the exchange of information on complaints received by anti-discrimination centres, the reporting of cases of discrimination to the police, the influx of cases to be dealt with by the public prosecution service and the latter's treatment of these cases. New trends are looked at. Where necessary, there is a discussion of the public prosecution service's handling of a particular case, for instance when charges have been dropped either because it is concluded that there has been no discrimination punishable under criminal law or because there is insufficient evidence.

4. The Partnership Training Project

58. Promoting cooperation between the actors involved in fighting racism and discrimination is also the aim of the Partnership Training Project in which the public prosecution service participates. The Project was set up in the Rotterdam-Rijnmond region as a result of close collaboration between the police and Rotterdam's anti-discrimination centre RADAR.

59. The target groups are the police, the public prosecution service, anti-discrimination centres, municipal authorities and organizations within migrant communities. The project aims to achieve partnerships at regional level, analogous to the Rotterdam method, to foster an active and energetic approach to fighting racism and discrimination. Another aim of the project is to help increase the professionalism of the people and organizations involved, and the police services in particular.

60. To achieve this, a training project has been developed to encourage cooperation and to provide the necessary foundation for it. The training course is concluded with a "contract" or declaration of intent, which is signed by the participating parties. One of the project's aims is to make a number of practical instruments that have been developed in Rotterdam (including a handbook, a manual, training courses at management and operational level) available to the new partnerships, which can adapt them to local needs and circumstances.

61. The body participating in the project on behalf of the public prosecution service is the National Discrimination Expertise Centre. The public prosecution service hence endorses the project's aims and organizational set-up and contributes to the training component, by giving lectures for instance.

62. The other participants are Rotterdam-Rijnmond police, the municipality of Rotterdam, RADAR, the National Police Selection and Training Institute and the National Bureau against Racism. The project receives a subsidy from the European Union. In several regions the training courses are already under way.

5. The National Discrimination Expertise Centre (attached to the public prosecution service)

63. In the autumn of 1997, the Board of Procurators-General decided to set up an expertise centre, a permanent facility for the public prosecution service which would be able to answer substantive legal questions relating to the fight against discrimination and right-wing extremism. The Centre formally started work on 1 September 1998. Its objective is to optimize the public prosecution service's enforcement of criminal law in relation to discrimination. Its primary tasks are to develop, maintain and organize expertise, for instance by contributing to symposiums and training courses; to inform and advise the public prosecutors' offices at district courts; to coordinate current investigations and prosecutions; to organize the regular consultations that take place between public prosecutors and advocates-general with special responsibility for discrimination matters; to contribute to the development of national policy; to draft and distribute manuals, strategic plans etc. aimed at improving local law enforcement.

64. The National Discrimination Expertise Centre is attached to the public prosecutor's office at Amsterdam district court. In 1998 its staff consisted of one part-time public prosecutor and one full-time policy officer.

6. National police "discrimination officer"/National Consultative Platform

65. At the end of 1997, the board of chiefs of police designated a national police "discrimination officer" with the aim of achieving national coordination within the police service

too, as well as gathering knowledge and experience gained in matters relating to this issue. The "discrimination officer" functions as a national liaison point for the public prosecution service and others, one of his/her responsibilities is to improve the registration and information supply within the police in relation to discrimination cases.

66. It has since been decided to set up a National Consultative Platform between the national "discrimination officer" within the public prosecution service (i.e. the chief public prosecutor for Amsterdam, to whose office the National Expertise Centre is attached), the national "discrimination officer" within the police, and the manager of the relevant police corps (in this case, the burgomaster of Zaanstad).

7. Registration

67. One of the problems discussed during the working conference in February 1997 was the poor registration of discrimination cases. The problem centres not so much on the registration of offences against articles of legislation that deal specifically with discrimination (articles 137c-g and 429 quater of the Criminal Code) as of crimes under general law with a racist or discriminatory background. Neither the police nor the public prosecution service can supply a comprehensive overview of cases of this kind, as emerged from the letter of 30 June 1997 from the then Minister of Justice to the Lower House of Parliament. This picture was confirmed in the Racism and Right-wing Extremism Monitor (first report) that the Minister of the Interior presented to the Lower House on 21 October 1997. The member of the Board of Procurators-General with special responsibility for discrimination matters then brought the issue to the attention of the chair of the Board of Police Commissioners. The registration of incidents with a racist or discriminatory background is now given special attention by the national "discrimination officer" within the police.

68. Amsterdam police are currently developing a registration system tailored specifically to cases of this kind, for use nationwide. This registration will be interchangeable with that of the National Discrimination Expertise Centre of the public prosecution service. It is believed that this system will provide a good and reliable overview of incidents with a racist or discriminatory background.

8. Political parties/right-wing extremism

69. In September 1996 the Board of Procurators-General adopted a document entitled "Handbook on violations of public order by extreme right-wing groups" (entered into effect on 1 December 1996). This handbook contains practical recommendations and information concerning action to be taken by police and the public prosecution service in the event of the undermining of public order, or the threat of such, by right-wing extremists. While still under preparation the handbook proved to be a useful aid for those concerned, including the police.

70. After certain left-wing politicians had received written and/or telephone threats from right-wing extremists, Amsterdam police - at the request of the public prosecution service - drew up a set of guidelines for use in such cases, with suggestions and recommendations on what action to take. These guidelines were distributed among political representatives at national,

provincial and local level. At the same time, it was agreed that the political party concerned ("Groen Links") would inform the National Office of the Public Prosecution Service of any reported incidents directed against their members of parliament or of provincial or municipal authorities. In addition, on 2 March 1998 the Board of Procurators-General wrote a letter to the chief public prosecutors and the public prosecutors and advocates-general with special responsibility for discrimination matters, asking them to raise this matter with the police (with liaison officers, for instance) and to ensure that any cases of threats and/or other forms of violence against or harassment of members or representatives of political bodies reported to the police receive special attention and that they be treated with the greatest possible care.

71. As already noted in the government position of 10 April 1997 on the report by the Temporary Scientific Committee on Minorities Policy (TWCM), the public prosecution service conducted an investigation spanning the years 1993-1996, in collaboration with the National Security Service, to discover whether there is any discernible pattern or system underlying crimes of violence committed by extreme right-wing organizations or their supporters. The then Minister of Justice informed the Lower House of its findings by letter of 30 June 1997.

72. This investigation led to the cautious conclusion - on the basis of the available information - that violence by right-wing extremists is limited in extent and does not appear to be increasing. This applies to the frequency of the violence as well as to its intensity and the degree of organization involved. For the rest, there was no evidence of any pattern or systematic nature in the violent crimes committed by right-wing extremists. This picture was confirmed by the reports on racist violence that were issued by the Willem Pompe Institute of Utrecht University and by the Ministry of Justice's Research and Documentation Centre, which were drawn up at the request of the Minister of the Interior, and about which the Lower House was informed by letter from the Minister of the Interior of 7 May 1997. These reports were requested because of a need to gain more insight into the background, causes and extent of racist incidents and the type of perpetrators who were involved. As noted above (under the heading of Registration), the then Minister of Justice observed in her letter of 30 June 1997 that the available information on incidents with a racist background was not comprehensive.

73. As from 1 September 1998, all action taken under criminal law in response to expressions of discrimination by extreme right-wing groups and individuals has been coordinated by the National Expertise Centre on Discrimination.

74. The principles that the Board of Procurators-General has formulated as the basis for action taken against right-wing extremism still apply without qualification: all reported incidents are investigated and lead to prosecution if sufficient evidence exists. In no case is the potential for martyrdom or the exploitation of publicity to be used as an argument to refrain from prosecution.

75. In tackling discriminatory acts by right-wing extremists, the police and public prosecution service focus primarily on natural persons. If, however, a political party - as a legal entity - is guilty of discrimination, the legal entity and its directors are also prosecuted. Recent examples are included below in the overview of relevant case law.

76. A legal person whose object or activities are in breach of public policy may be proscribed and dissolved following an application by the public prosecution service (art. 20, book 2, Civil Code). As already expounded in the government position of 10 April 1997 on the TWCM report, the Netherlands Government is of the opinion that great restraint should be exercised in deploying this instrument against political parties. Banning a party means making it completely impossible for the party to function. This deals a serious blow to the political system, in which political parties are vital links between politics and the general public. The Government therefore believes that this instrument should be resorted to only in the case of a very serious, systematic, disruption of the democratic process.

77. In November 1997, partly in consequence of the conviction of the political party Centrum Partij '86 (CP '86) by a final and conclusive judgement on 30 September 1997, the public prosecution service decided to apply for the proscription and disbanding of this party. Given the convictions of this party and of the members of its executive, and in the light of the party's manifesto, newspapers and other publications, the public prosecution service considered that there were sufficient grounds on which to state that CP '86 "behaves in an intimidating and inflammatory manner in respect of political parties and groups that protect the interests of aliens. Where a political party operates as a racist organization and constantly advocates that certain groups of people should be discriminated against within our society, whereby violence is not shunned and the contrasts between groups within our society are dangerously accentuated, this party's interest in its continued existence is outweighed by the need to protect the interests of others, who are the victims of these practices".

78. On 18 November 1998 Amsterdam district court declared CP '86 an illegal party and dissolved it. The court considered as follows:

> "The public prosecutor rightly stated in her advisory opinion that this legal remedy [proscribing and dissolving a party] must be used with restraint. For diversity of political parties and freedom of expression and association are among the very foundations of our constitution. [...] The mere infringement of one or more prohibitions by a legal entity is not sufficient reason to proscribe it. Such infringements must have become a regular part of the modus operandi to be classified as activities; furthermore, these activities must be so serious as to fall within the scope of this article. [...] It also appears from the party's object and explanatory comments on it, from its manifesto, the passages that have been quoted from the party's propaganda material, the party newspapers, and the way in which the party sought publicity [...] that the purpose of this activity on the part of the NVP/CP '86 was none other than to arouse and incite, or to foster, discrimination against ethnic minorities. As already observed at point 4.3. above, this should be defined as contrary to public policy within the meaning of Book 2, article 20, paragraph 1 of the Civil Code".

9. Discrimination on the Internet

79. Since 27 March 1997 a Reporting Centre for Discrimination on the Internet (MDI) has been active. The MDI was launched with a start-up subsidy of 10,000 Netherlands guilder from the Ministry of the Interior as part of the European Year against Racism. It is a project set up under the auspices of the Magenta Foundation and it is staffed by volunteers.

80. The MDI concerns itself with the fight against racism on Dutch-language Internet sites. It assesses each report it receives: if it decides that a particular utterance may constitute a criminal offence, it sends a warning, asking the person who has placed or distributed the utterance to remove it. If this request is ignored, the MDI reports the matter to the police and informs the provider that it has done so. In this way, the MDI tries to prevent the distribution of racist utterances and to reduce their number. It appears from the MDI's annual report, which was published in the spring of 1998, that requests for removal are generally complied with.

81. In mid-December 1998, the Ministry of Justice and the Ministry of the Interior and Kingdom Relations decided to grant the MDI a subsidy to enable it to continue its work.

10. Important case law

82. The following paragraphs summarize the most important judgements from 1998, 1997 and 1996 in cases concerning racial discrimination.

83. In a case before the Hague court of appeal on 24 June 1998, a local councillor representing the Centrum Democraten party distributed sheets of paper with discriminatory texts in the lobby of Dordrecht town hall. The court of appeal judged that the text distinguished between two groups: "aliens who have entered Dutch society" (referring to ethnic minorities, in particular Muslims) on the one hand and "our own Dutch citizens" on the other. In this twofold distinction, the presence of persons belonging to the former group is repeatedly linked to social and economic problems in the Netherlands and to related feelings of insecurity among the population at large. The gist of the argument was that this problem must be tackled by discriminating between these two groups - aliens and Dutch citizens - when allocating available resources and within the education system.

84. Through these utterances, "the exercise of human rights and fundamental freedoms by the groups of aliens referred to are frustrated or undermined". This distinction therefore promoted discrimination and was punishable under criminal law. The text concerned was formulated "in words of aggression and impending doom". "The immunity enjoyed by local councillors [...] does not include releasing to the press the texts of speeches". The court considered the following offence proven: "publicly, in writing, inciting hatred of and discrimination against persons on the grounds of their race or religion".

85. A case before the Arnhem court of appeal on 29 December 1997, concerned a demonstration by the Nationale Volkspartij, the Centrum Partij '86 and the Centrum Democraten on 24 February 1994. At the demonstration held in Zwolle, the chairman of the Centrum Democraten had said: "As soon as we have the power and the opportunity, we will abolish the multi-cultural society". The court of appeal ruled that the case brought by the public prosecution service was admissible. In arriving at this decision, it considered:

(a) That there was no question of unequal treatment because the cases in question were not equal;

(b) That the prosecution was not in pursuit of a political objective; the concern of the public prosecution service was to uphold the legal order by enforcing the criminal law;

(c) That the parliamentary immunity of a member of Parliament in relation to his utterances ended at the doors of the houses of Parliament;

(d) That the prosecution was not incompatible with the right to freedom of expression. In expressing his opinions, the accused must take into account his responsibility under the law and hence the limits imposed by criminal law. "This makes it incumbent on the accused, but not only on him, to exercise restraint and caution, matters to which the accused should pay extra attention in the case of a demonstration, since demonstrations set out to influence public opinion, and generally involve a coarser use of language and choice of words than normal. Under the provisions of articles 137 ff. of the Criminal Code, fellow Dutch nationals are entitled to protection from rabble-rousing that is an affront to their human dignity."

86. As regards the proof that the accused was guilty of incitement to discrimination against persons on account of their race (article 137d of the Criminal Code) the Court ruled that "The statement 'We will [...] abolish the multi-cultural society', especially when taken together with other slogans uttered during the demonstration, in particular 'The Netherlands for the Dutch', 'Our own people come first' and 'No more room', cannot be seen as anything other than a discriminatory statement in relation to persons belonging to ethnic minorities in the Netherlands; for these slogans are indisputably aimed at procuring the removal of persons belonging to ethnic minorities from Dutch society."

87. The court proceeded to give the accused a two-month suspended sentence and imposed a fine of 7,500 Netherlands guilder. The defendant lodged an appeal in cassation from this judgement.

88. In a case before the Supreme Court on 25 November 1997, (Nederlandse Jurisprudentie 1998/261), the accused had distributed to persons resident in The Hague - unasked - pamphlets and leaflets denying the Holocaust. During civil proceedings instituted against the defendant by the Centre for Information and Documentation about Israel, the National Bureau against Racism and the Anne Frank Foundation, the defendant had employed terms such as "the myth of the Holocaust" and "grotesque deception of the public". The Supreme Court ruled that utterances made in open court in a civil case could be deemed intentionally offensive within the meaning of article 137c of the Criminal Code unless they constituted a necessary part of the accused's defence. "Furthermore," the court ruled, "anyone may incur criminal liability during civil proceedings. It follows that a party in the suit may not violate criminal law in the formulation of its propositions and defence."

89. For the rest, the Supreme Court upheld the judgement of 2 May 1996 given by The Hague court of appeal, which had imposed a six-month suspended prison sentence with an operational period of two years, and a fine of 5,000 Netherlands guilder. This meant that the denial of the Holocaust was defined as an act of discrimination which is punishable as such under criminal law.

90. In a case before the Supreme Court on 30 September 1997 Nederlandse Jurisprudentie 1998/118), the defendant, the Vereniging Centrum Partij '86/Eigen Volk Eerst, was accused of using offensive and discriminatory language and incited hatred of ethnic minorities in the pamphlets and leaflets distributed by the Centrum Partij '86 and in television broadcasts.

Accompanying the indictment was a videotape showing two party political broadcasts for the Centrum Partij '86; the words used in these broadcasts were quoted in the indictment.

91. By judgement of 2 May 1995, Amsterdam district court had convicted the Vereniging Centrum Partij '86/Eigen Volk Eerst of offences under articles 137c and 137d of the Criminal Code for using words in leaflets and television broadcasts inciting hatred of and discrimination against a certain group of people on account of their race and/or religion.

92. By judgement of 11 December 1995, Amsterdam court of appeal had quashed this judgement, sentencing the Centrum Partij '86 to a fine of 10,000 Netherlands guilder. The party leader received a one-month suspended prison sentence, with an operational period of two years, and was fined 5,000 Netherlands guilder for "participating in an organization whose object is to commit criminal offences, while being the director of that organization".

93. The appeal in cassation was largely dismissed by the Supreme Court. The Supreme Court held as follows:

(a) The court of appeal was right to conclude that the videotape attached to the notice of summons and accusation did not constitute part of the indictment under articles 137d and 137e of the Criminal Code;

(b) The argument submitted by the defence that there had been no intention to commit crimes within the meaning of articles 137c, 137d, and 137e, paragraph 1 of the Criminal Code had been refuted on adequate grounds. "In rejecting this defence, the court of appeal's not unreasonable view of the facts was not merely that the accused and his fellow perpetrators should have known that the pamphlets, leaflets and television broadcasts were offensive and discriminatory and served to incite hatred of ethnic minorities in the Netherlands, but that they did in fact know this. The court of appeal concluded from this that anyone who acts in this way, with this knowledge and under the circumstances that had been factually established, has the intention of committing such criminal offences. The court of appeal's ruling that the object of the organization to which the accused belonged was to commit criminal offences did not imply an incorrect interpretation of the law; furthermore, in this regard too, the evidence submitted was sufficient for the judicial finding of fact."

94. In a case before the Supreme Court on 16 April 1996 (Nederlandse Jurisprudentie 1996/527), the charge was that during party political broadcasts on radio and television, two leading members of the Centrum Democrats had expressed views (on aliens, minorities and asylum-seekers) that were calculated to incite hatred of, and were offensive to, certain groups of people on account of their race. The Supreme Court ruled that the court of appeal had used too narrow a definition of the words "incitement to hatred of, or discrimination against, persons on account of their race" and "to give [...] expression to views offensive to a group of people because of their race", words which manifestly have the same meaning in the indictment as they do in article 137d and 137c, respectively, of the old Criminal Code.

95. According to the Supreme Court the court of appeal had ruled that making statements about aliens, minorities and asylum-seekers did not constitute incitement to hatred or discrimination against, or offensive behaviour towards, people on account of their race, religion

or beliefs unless specific reference was made to the race of those concerned. "This ruling implies too narrow an interpretation of the criminal provisions referred to above, since whether the use of the words 'aliens', 'minorities' and 'asylum-seekers' corresponds to the offences defined in articles 137c (old) ff. of the Criminal Code is partly dependent on the nature of the utterances, the extent to which they were related, and the context in which they were made."

96. Other important considerations in this case were that the appropriate provisions of legislation (137c (old) ff. of the Criminal Code) are formulated with sufficient precision, that the prosecution did not serve a merely political purpose, that the principle of equality (in that the defendant was being prosecuted while other politicians were not) was not breached, and that the word "race" in articles 137c (old) and 137d (old) of the Criminal Code embraced colour, descent, or national or ethnic origin, within the meaning of article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination.

D. Article 5

1. Article 5 (b) - Immigration policy

(a) General

97. The 1965 Aliens Act was last significantly amended in 1994. Minor proposals were made for changes in 1996 and 1997, the most important of which being:

(a) A proposal to introduce a restricted form of appeal in aliens' cases; and

(b) A proposal to make an authorization for temporary stay a statutory requirement.

98. At the end of 1997 the Government submitted to the Lower House of Parliament a bill to amend the Aliens Act, introducing the possibility of appeal in aliens' cases. The proposed amendment envisages a limited form of appeal to the Administrative Law Division of the Council of State; a list of decisions and court rulings is included, however, from which no appeal lies.

99. The legislation making an authorization for temporary stay a statutory requirement entered into effect on 11 December 1998. Pursuant to the new legislation, the primary rule is that an alien must submit an application for an authorization for temporary stay to a Dutch diplomatic mission in the country of origin or permanent residence. An application to be admitted to the Netherlands will not be considered if the alien concerned is not in the possession of a valid authorization for temporary stay.

100. The general principles of policy on aliens remain unchanged. The Netherlands pursues a restrictive policy on aliens, with the exception of refugees. Admission is possible on the following grounds:

(a) International obligations (Convention relating to the Status of Refugees, human rights conventions);

(b) Substantial Dutch interests;

(c) Compelling reasons of a humanitarian nature.

The policy rules are laid down in the 1994 Aliens Circular.

101. Regarding asylum procedure, at the end of 1995 the Government presented a phased plan for asylum policy. This plan sought primarily to change and streamline the implementation of asylum policy, in particular to relieve the enormous pressure on everyone involved in the asylum system caused by the increased numbers of asylum-seekers in 1993 and 1994. At the beginning of 1997, the results of the implementation of the plan, which were largely positive, were reported to Parliament.

102. In response to recent developments, however, the Government has decided to amend the Aliens Act once again, the main aim being to achieve a shorter and more streamlined asylum procedure. It is intended that the proposed amendments be presented to the Council of State for its advice in mid-1999.

(b) Family reunification

103. Under the law on aliens, conditions are attached to the admission of the relatives of Dutch nationals and aliens residing legally in the Netherlands.

104. Where the admission of relatives is concerned, a special, differentiated policy is pursued, dating from 1993. Following an evaluation of this policy, certain changes were made, in particular to clarify the rules. The main rule is that the person in the Netherlands bears responsibility for maintaining relatives who wish to come to this country. In consequence, the income of the person concerned must fulfil certain criteria, which take sufficient account of circumstances in which the person would be unable to bear this responsibility and in which there is no possibility of returning to the country of origin to resume family life there. All applications for family reunification and family formation are looked at in the light of international norms concerning the right to respect for family life, in particular article 8 of the European Convention on Human Rights.

(c) Compulsory Identification Act

105. As from 1 June 1994, the Compulsory Identification Act entered into effect. As a result, two amendments have been made to the Aliens Act. The first is the abolition of the old requirement stipulating that aliens must always carry on their person a document indicating their residential status. The second is an amendment to section 19 of the Aliens Act, whereby it is no longer permissible to stop a person on the basis of "the suspicion that the person was an alien", but only in the presence of "concrete indications suggestive of illegal residence".

106. In 1997 the supervision of aliens was evaluated on the basis of the changes to section 19 of the Aliens Act. From this evaluation it appeared that the amended section 19 of the Aliens Act created a clearer framework for the supervision of aliens. This supervision is not arbitrary, but is carried out only where there is a genuine likelihood of encountering illegal aliens.

107. No evidence emerged from the investigation to suggest that either the police or the Royal Military Constabulary acted in a discriminatory way in the application of section 19 of the Aliens Act. It emerged that very few complaints have been submitted concerning discriminatory conduct on the part of the police. Shortly after the entry into effect of the Compulsory Identification Act, the National Bureau against Racism set up a project group to look at complaints on the application of section 19 of the Aliens Act. This project group has since been disbanded because of the lack of complaints.

(d) The obligation to renounce other nationalities in the case of naturalization

108. Since 1 October 1997, aliens - with the exception of a large number of specified categories - must renounce their original nationality upon naturalization as Dutch nationals. The exempted categories are listed in a policy circular. This change of policy was decided upon under the influence of the Lower House of Parliament. The basic principle is that it is preferable for people to have a single nationality unless objective reasons exist for permitting more than one.

2. Article 5 (c) - Enfranchisement of aliens

109. The following conditions apply at present for non-Dutch nationals wishing to vote or stand for election in municipal elections:

(a) EU nationals have the same rights as Dutch citizens. Any person over the age of 18 who is resident in the Netherlands may vote or stand for election in local elections, providing they have not been disqualified from doing so. The fact that different rules apply to EU nationals and non-Dutch citizens from other States derives from the Maastricht Treaty (1991) and the EC directive of 1994, which the Dutch Government implemented in July 1996;

(b) Non-EU nationals have these rights if they have been legally resident in the Netherlands for a continuous period of five years on nomination day. They must be in possession of (i) a residence permit or (ii) a permanent residence permit, or (iii) they must have refugee status, granted by the Minister of Justice. The five-year period includes the period of provisional residence status. However, conditions (i)-(iii) must be fulfilled on nomination day. It goes without saying that they must also satisfy the conditions that apply to Dutch nationals. Before 1 January 1998, non-EU nationals were required to be legally resident in the Netherlands only on nomination day. The preceding five years' residence were also counted, even if such residence was not legal. The requirement of five years' legal residence stems from the Benefits Entitlement (Residence Status) Act, which makes legal residence in the Netherlands one of the qualifications for various social benefits.

110. Although concerted efforts were made to encourage non-Dutch nationals to vote in the last four council elections, it is still unclear whether their entitlement to do so has had any impact on their integration into Dutch society. A survey was conducted to see how many people exercised this right in the major cities in the most recent local elections. However, the survey looked only at the turnout among the largest ethnic minority groups (including Dutch nationals of Antillean or Aruban origin), and not at the turnout among all non-Dutch nationals.

111. A survey carried out during the 1994 municipal elections showed that the turnout among ethnic minorities in the six largest cities (Amsterdam, Rotterdam, Tilburg, Enschede, Utrecht and Arnhem) averaged 42 per cent. In the last municipal elections (March 1998), the turnout in four large cities (Amsterdam, Utrecht, The Hague and Arnhem) was 32 per cent. It should be said, however, that the study in the four major cities was conducted in the poorest neighbourhoods, and that the actual turnout was therefore most probably higher. A breakdown into population groups shows that the turnout is generally highest among voters of Turkish origin, followed by Moroccans and finally Surinamese and Antilleans.

112. The number of candidates from ethnic minorities elected to local councils in 1998 had more than doubled compared with the figures for 1994. A total of 152 councillors were elected in 74 municipalities, some as members of the municipal executive. A considerable number of preferential votes were cast for candidates of Turkish origin.

Table 1

Number of candidates from ethnic minorities elected to local councils in 1998, by ethnic background

Turkish	75
Moroccan	20
Surinamese	34
Antillean/Aruban	7
Moluccan	7
Other	9

Table 2

Number of candidates from ethnic minorities elected to local councils in 1998, by political party

Labour Party	69
Green Left Alliance	36
Christian Democratic Alliance	25
People's Party for Freedom & Democracy	5
Democrats '66	5
Socialist Party	4
Local parties	8

113. There has been a marked increase in the number of councillors who belong to an ethnic minority. All the national political parties apparently consider it important for these groups to have a political voice at both municipal and national level. They have made an active effort to achieve this, and have found excellent representatives within these communities.

3. Article 5 (e) (i) - Employment policies

(a) General

114. As announced in paragraph 87 of the previous report (CERD/C/319/Add.2), the CBA (Central Manpower Services Board) has appointed 50 special company consultants on minority affairs to the Regional Manpower Services Boards (RBAs). What is more, the CBA has set itself the target of achieving proportional placement of ethnic minorities in jobs by the year 2000. It therefore launched a special project for ethnic minorities in 1996. In 1999, the CBA will provide opportunities for an extra 10,000 job seekers from ethnic minority groups.

(b) Act Governing the Promotion of Proportional Participation in the Employment Market for Immigrants

115. The report of the first evaluation of the Act Governing the Promotion of Proportional Participation in the Employment Market for Immigrants (WBEAA) was submitted to Parliament in October 1996. It showed that only 14 per cent of employers were implementing all the provisions of the Act. The majority (57 per cent) had taken a first step by introducing a personnel register. The Act had evidently had an impact on employers who were putting it into practice: 41 per cent had gained more insight into the issue in question, 25 per cent had given more consideration to employing ethnic minorities, and 11 per cent had changed their staffing policy. On 4 December 1996, the two sides of industry presented a report to the Government, proposing certain amendments to make the Act more effective. These recommendations were based on their 1996 agreement to provide ethnic minorities with better access to jobs and on the findings of the above report. The Government incorporated these proposals in the Employment of Minorities (Promotion) Bill, which was submitted to Parliament on 23 May 1997. The aim was to simplify procedures and cut red tape. The main provisions of the Act have remained unchanged: organizations employing more than 35 people are still required to keep a register of personnel from the target group. They also have to submit written reports stating the number of staff from ethnic minorities employed by their organization, and describing the measures they have taken to promote recruitment among ethnic minorities and those they propose to take in the future.

116. The main proposals for amendments were as follows:

(a) Employers are to submit their annual reports to the Regional Manpower Services Board instead of the Chamber of Commerce and Industry;

(b) Instead of drawing up two annual reports - one for publication, and one for internal use presenting the measures to be implemented in the following year to encourage the employment of ethnic minority groups - employers will be required to publish one document containing figures on ethnic minority employment rates within their organizations, as well as the measures they intend to take to ensure these are proportionate to participation rates in the workforce as a whole;

(c) The Act will be enforced on the basis of civil law rather than criminal law. The Labour Inspectorate will be responsible for supervising compliance.

117. The proposed amendments met with broad political support. The amended Act, which will be renamed the Employment of Minorities (Promotion) Act, was passed on 7 April 1998 and became effective on 1 January 1998 (with retroactive effect). The Act is of a temporary nature, as was the previous Act, and is due to lapse on 1 January 2002.

(c) Task force

118. In the spring of 1998 a task force was set up by the Ministry of Social Affairs and Employment and the Ministry of the Interior. The task force monitors the implementation of both the Act and the Council Agreement mentioned under (b) above. It includes high-level representatives of the social partners, government employers, public and private temporary employment agencies and ethnic minority groups. Their aim is to create conditions for a better balance between supply of job seekers from ethnic minorities and demand on the part of employers. The task force will encourage best practices on both sides of industry and in individual companies.

119. As of October/November 1998, the task force had six regional meetings with employers, human resources personnel and members of works councils. The Joint Industrial Labour Council will publish the interim evaluation of the minorities agreement in the autumn of 1998. In the same period, the Minister of Social Affairs and Employment will report to the Lower House of Parliament on compliance with the Act. The task force will then give its response to these documents.

120. In December 1998, the task force and the Council organized a meeting with collective agreement negotiators and representatives of branches of industry. The task force aims to have a clear analysis of the situation and to provide recommendations for follow-up action by the end of 1999.

(d) Special projects

121. The project to promote the employment of immigrant women in child care, which was mentioned in paragraph 123 of the previous report (CERD/C/319/Add.2), was - as a consequence of its temporary nature - concluded in 1996.

122. In 1994, following positive reactions from employers and trade unions, the then Ministry of Welfare, Health and Culture (now Health, Welfare and Sport) cooperated with sector funds in contracting a pilot project in the field of intercultural management in the health-care sector, to run at 10 different institutions in the health-care sector. The purpose of the pilot was to conduct field studies aimed at developing and implementing models and instruments for intercultural management. The institutions themselves covered a large proportion of the costs. Transfer of the results to the entire sector was facilitated by establishing a temporary support structure known as TOPAZ. The project was set up for a period of four years to promote the effective creation of permanent jobs for members of ethnic minorities in the health-care sector. By the

end of 1997 the project had brought around 8,000 members of ethnic minorities into the health-care sector. Due to the success of the TOPAZ approach, the Government has decided to hold it up as an example to other government departments.

(e) Discrimination in the labour market

123. In addition to the observations made by the Netherlands Government in the previous report with respect to dismissal (in particular paragraph 111, CERD/C/319/Add.2), it should be noted that the principles of seniority and proportionality should be strictly and coherently applied as stated, but that it is also necessary to emphasize that the employment board manager should avoid discrimination when deciding on requests from employers for authorization of dismissals. If in requests by employers for group dismissals employees from minority groups are over-represented, this can be taken as an indication that discrimination is taking place.

124. As a rule the Government's aim is to conduct a restrictive policy with regard to statutory measures and to rely in principle on the self-regulating capacity of the social partners (employers' and employees' (i.e. trade union) organizations) as far as the labour market and employment measures are concerned. This goes for anti-discrimination/equal treatment measures as well. Only in cases where the self-regulating capacity of the social partners proves insufficient or ineffective will the Government consider taking statutory measures.

125. Where statutory measures are required, general measures covering the interests and protection of all employees are, on the whole, preferable. However, in those instances where general measures prove insufficiently effective as regards specific groups such as ethnic minorities, further measures specifically aimed at these groups are considered.

126. As far as access to the labour market for people seeking work is concerned, the Government's role is restricted to the protection of the fundamental rights of the applicant, i.e. the right of a fair chance of appointment in a job and the protection of privacy. These aspects have been dealt with in the Constitution, the Civil Code (Burgerlijk Wetboek) and international treaties, as well as in the Data Protection Act (Wet Persoonsregistratie), the Equal Treatment Act (AWGB. Algemene Wet Gelijke Behandeling) and the Equal Opportunities Act (Wet Gelijke Behandeling van mannen en vrouwen bij de arbeid).

127. The annual reports of the Equal Treatment Commission show that people are increasingly making use of the possibility of complaining to the Commission. In 1996 there were 23 rulings dealing with discrimination on grounds of race and 12 on grounds of nationality (out of 149 cases). In the 1997 report, of 171 cases there were 37 rulings dealing with discrimination on grounds of race and 11 on grounds of nationality. The majority of complaints of discrimination at work submitted to the Equal Treatment Commission had to do with access to jobs and to a lesser extent with conditions of employment, dismissal and equal pay.

128. In addition to statutory measures and the activities of the Equal Treatment Commission the ILO project "Discrimination against migrant workers and ethnic minorities in the world of work" should be mentioned. In the first phase of this project a report was published entitled

"Discrimination against migrant workers and ethnic minorities in access to employment" (1995), which was discussed in Parliament. One of the results of this discussion was the initiation of an investigation by the Labour Inspectorate of the Ministry of Social Affairs and Employment into (i) the extent to which the recommendations of the Joint Industrial Labour Council (Stichting van de Arbeid, an organization in which both employers' and employees' organizations are represented) on codes of conduct for equal and fair treatment of potential workers in access to employment were incorporated into general agreements between employers and employees as well as acted upon by employers themselves; and (ii) the way in which complaints procedures were handled.

129. In this context mention should also be made of the temporary helpline for questions and complaints about application procedures set up by the Government in 1997. The complaints received covered all fields of discrimination, including racial discrimination. The results of the project showed that 62 per cent of the complaints had to do with discrimination; of these, 4 per cent concerned discrimination on grounds of race, while discrimination on grounds of age or disability were the main complaints.

130. The results of both the investigation by the Labour Inspection Service and the temporary helpline were discussed at a round table conference with the different parties concerned (including the Government and the social partners).

131. The outcome of the conference was that the Joint Industrial Labour Council decided to set up an internal working group charged with revising the recommendations on application and complaints procedures in order to achieve (i) adequate procedures within work organizations; (ii) improvements on the incorporation of these recommendations in general agreements between employers' organizations and trade unions; and (iii) an adequate complaints procedure. The internal working group reported on its results in 1998. These results were discussed in one of the official consultative meetings between the Government and the social partners in 1998.

132. In September 1997, as a further part of the ILO project, a report on "The documentation and evaluation of anti-discrimination training activities in the Netherlands" was published. As a follow-up to this report a national seminar took place in March 1998, at which the results of this report were discussed. The outcome of this conference will be used as a further input into the final conference, inter alia in drawing up a checklist for effective results with anti-discrimination training. The results of the total project will be discussed in the final international conference in 1999.

(f) Employment

133. With reference to paragraphs 112-115 of the previous report (CERD/C/319/Add.2), employment (that is, the number of people in work) grew almost twice as fast between 1994 and 1997 amongst ethnic minority groups as in the native Dutch population (15 per cent and 8 per cent respectively). Unemployment also declined sharply among ethnic minorities, but since it fell slightly more in the second group, it is still almost four times as high amongst minorities.

Table 3

Unemployment amongst ethnic minorities as a percentage of the workforce (15-64 years) and absolute numbers of employed and unemployed

	1994	1997	No. of people in employment in 1997 (thousands)	No. of unemployed in 1997 (thousands)	Changes in % of unemployment
All ethnic minorities	26%	20%	303	77	-17
Turks	31%	21%	48	13	-41
Moroccans	31%	22%	37	10	-26
Surinamese	21%	14%	99	16	- 34
Antilleans/Arubans	21%	20%	21	5	+1
Other ethnic minorities	28%	25%	98	32	+17
Other non-native Dutch	12%	10%	240	26	-15
Native Dutch	7%	5%	5 857	335	-21
Total	8%	6 %	6 400	438	-20

Source: Ministry of Social Affairs and Employment on the basis of a survey of the working population.

(g) Employment of minorities in government departments

134. In the final evaluation of the Ethnic Minorities in Government plan for 1991-1995 (known as the 2nd EMO plan), the Government noted that considerable progress had been made, and announced that it would continue to pursue an affirmative action policy for minorities within the framework of the Fair Employment of Ethnic Minorities Act. This means that central Government is aiming not only to achieve proportional levels of employment for ethnic minorities, but that the ministries individually are required to promote access at a wide range of levels.

135. At the end of 1996, the number of civil servants from ethnic minorities and the level of the posts in which they were employed exceeded the targets for proportional employment. As a result, most ministries are now striving to maintain the status quo. At the same time, they are seeking ways to recruit members of the target group to more highly qualified posts. A number of ministries and the Labour and Organization Fund for the government sector are preparing a project to achieve this. The intake of ethnic minorities was 7.3 per cent in 1996, the outflow 6.2 per cent.

(h) Employment of minorities in the armed forces

136. The figures in table 4 indicate that in 1996, the Ministry of Defence failed to achieve the indicative equal representation by 1.1 per cent but achieved (and even exceeded) the indicative equal representation in 1997.

137. The recruitment of new personnel for civilian and long-term military functions is hampered by the decrease in the defence budget and the concomitant reductions in personnel.

The recruitment of short-term military personnel, usually employed on the basis of a four-year contract, does offer possibilities due to the annually recurring demand for this category of personnel. It is expected that following completion of the reduction and reorganization process and after normal personnel turnover rates become applicable again, the currently developing upward trend in minority group representation in the Ministry of Defence will be maintained.

Table 4

Ethnic minorities in the armed forces

	31 December 1996	31 December 1997
Total personnel	77 435	77 013
Total minority group personnel	2 224	4 410
Total percentage minority group personnel a/	2.9	5.7
New personnel	8 943	6 675
New minority group personnel	671	898
Percentage minority group personnel in new personnel	7.5	13

a/ The indicative percentage for equal representation of minority groups in the Ministry of Defence, based on data from the Central Bureau of Statistics, is 4 per cent.

138. A number of policy decisions and projects have been implemented to increase representation of minority groups in the Ministry of Defence. These projects include:

(a) Focused and specialized public information campaigns;

(b) Contacts with minority organizations aimed at improving representation and integration of minority groups in the Ministry of Defence;

(c) Training programmes for selection of officers to remove any potential cultural bias from the selection procedure;

(d) Organizing multicultural seminars for personnel already employed by the Ministry of Defence, especially personnel in managerial or command positions, in order to increase familiarization with other cultures;

(e) Improving recruitment advertising and public information programmes aimed at specific minority groups to reflect the multicultural aspects of the Ministry of Defence;

(f) Debriefing personnel from minority groups terminating their employment with the Ministry of Defence unexpectedly or before the end of their contract in order to ascertain the cause and address potential problems;

(g) Providing introductory training programmes carried out by external organizations in which members of minority groups are prepared for a job within the Ministry of Defence, as well as providing increased support and guidance for minority personnel during the initial training by the Ministry of Defence;

(h) Public information campaigns aimed at all Ministry of Defence personnel on policies concerning equal representation of minority groups in order to prevent stigmatization of and discrimination against personnel from minority groups.

4. Article 5 (e) (iii) - Housing policy

(a) General

139. The policy introduced in the early 1980s has essentially remained unchanged, i.e. there is no special housing policy for ethnic minorities. No distinction is made between applicants for housing according to their origin. Anyone legally residing in the Netherlands has the same entitlement to public amenities as Dutch nationals. Housing policy is primarily geared to the lower income group, which includes ethnic minorities. In the period covered by the present report, various measures have been taken that significantly affect this income group.

140. The Social and Cultural Planning Office (SCP) publishes detailed reports on the housing situation for ethnic minorities. The next is expected in 1999, following a survey of housing needs. It is noteworthy that the SCP's annual report for 1996 concluded that "The gap between minorities and the population as a whole is decreasing. The improvement is substantial, considering that minorities have a lower income and are over-represented in the large cities."

(b) Individual rent subsidy

141. Individual rent subsidy (IHS) is an important means of making housing affordable for the lower income group, which includes many people from ethnic minorities.

142. In recent years the significance of the IHS as a safety net for this income group has increased, a trend that was reinforced by the new Rent Subsidy Act, which entered into force in mid-1997. The Act seeks to make rent less of a burden on low-income households, to simplify housing legislation and to allocate rent subsidies more effectively. The Act also takes more account of larger households (families), which are more common among minorities than the rest of the population (see para. 146 (a) below).

143. A public information campaign was also set up in 1997 to reduce the number of households that were entitled to IHS but were failing to claim it.

(c) Minorities

144. Following on from the 1993 Minorities Housing Report (covering the period up to 1990), whose main conclusions were reproduced in the previous consolidated report to CERD, the

Social and Cultural Planning Office (SCP), in its "1996 Minorities Report", again looked in detail at further improvements in minorities' housing situation in the Netherlands. (The next report, covering the 1994-1998 period, is expected to appear at the end of 1999.)

145. The main conclusion of the 1996 report (p. 294) reads:

> "The conditions in which ethnic minorities in the Netherlands are housed continued to improve between 1990 and 1994. The previous report (1993) had already signalled a clear improvement in the eighties; this improvement now seems set to continue. Discrepancies between the housing conditions of ethnic minorities and those of the rest of the population are dwindling fast. Taking account of their lower incomes and of the fact that they are disproportionately well represented in the big cities, the improvement may be called striking."

146. The developments as regards the three main indicators (a) to (c) are as follows:

(a) Household size. Household size in the largest groups, and thus also of the average household, has decreased further:

Table 5

Average size of ethnic minority households, 1990-1994

	1990	1994
Turks	3.74	3.68
Moroccans	3.99	3.59
Southern Europeans	2.68	2.42
Surinamese	2.70	2.47
Antilleans	2.29	2.22
Rest of population	2.45	2.33

(b) Home ownership. Home ownership among members of ethnic minorities is still the exception rather than the rule, mainly because they are low earners. In the case of Turks and Moroccans home ownership has remained at about the same level (7 per cent). Among Surinamese and Antilleans the level is over twice as high (17 per cent). In 1994, 24 per cent of Southern European householders were home owners. In the case of the rest of the population the figure was 47 per cent; 83 per cent of Turks and Moroccans live in rented social housing and 11 per cent in private rented accommodation. In the case of Surinamese and Antilleans these figures are 71 per cent and 61 per cent respectively;

(c) Uptake of individual rent subsidy (IHS). In the case of Turkish and Moroccan households, uptake of IHS increased from 30 per cent to 35 per cent between 1990 and 1994. In the case of Surinamese and Antillean households it dropped from 44 per cent to 34 per cent, largely because their incomes rose. In the case of the rest of the population uptake of IHS declined slightly, from 25 per cent to 23 per cent.

(d) Refugees and asylum-seekers with residence permits

147. Refugees and asylum-seekers with residence permits enjoy the same rights and are subject to the same obligations as any other person residing legally in the Netherlands. When they leave central reception facilities and look for permanent housing they are regarded as "first-timers" on the housing market and as such enjoy some priority in the allocation of housing.

148. The Dutch municipalities were 98 per cent successful in achieving the targets set by central Government as regards housing refugees and asylum-seekers (proportionately linked to the size of the municipality). Some municipalities failed to meet the target, but as yet this has been offset by the fact that some municipalities exceeded theirs. Between the introduction of housing targets (May 1993) and November 1998, over 103,000 refugees and asylum-seekers were housed. Estimates suggest that in the first half of 1999, housing will have to be found for 10,500 refugees and asylum-seekers.

(e) Caravan dwellers

149. The repeal of the Caravan Act announced in the previous consolidated report to CERD has meanwhile been approved by Parliament. The Act should be repealed in 1999, thus bringing an end to the discriminating nature of existing legislation on caravan dwellers, and putting them on an equal footing with all other Dutch citizens.

150. At the same time that the Caravan Act is repealed, certain provisions giving preferential treatment to caravan dwellers will be added to the amended Housing Act, to compensate for the existing shortage of caravan parks.

(f) Urban renewal

151. A higher concentration of ethnic minorities live in cities in the Netherlands, particularly the big cities, than in the rest of the country. Policy has been developed to tackle social problems in inner-city neighbourhoods, partly by improving housing and the urban environment. To this end, a temporary urban renewal subsidy scheme was introduced in early 1997. The scheme had a budget of 65 million Netherlands guilder in 1997 (and another 65 million Netherlands guilder in 1998) and aims to promote a more varied housing stock in problem neighbourhoods where cheap dwellings constitute the only available form of housing.

152. In June 1997 the State Secretary for Housing, Spatial Planning and the Environment submitted a policy document on urban renewal to the Lower House of Parliament. In it the Government undertook to provide an extra 3.7 billion Netherlands guilder over the next 12 years to complete urban renewal in run-down neighbourhoods and to renovate others, particularly those built shortly after the war.

153. The Coalition Agreement of August 1998 pledged another 2.25 billion Netherlands guilder for urban renewal up to the year 2010. The total urban renewal budget (which includes completion of existing programmes) up to the year 2010 is slightly under 10 billion.

5. Article 5 (e) (iv) - National Assistance Act

154. No new developments took place during the reference period. However as was explained by the Government delegation during consideration of the previous report by the Committee in March 1998, a new act has been drafted which will replace certain parts of the current National Assistance Act, the Aliens Act and other legislation. The new Act, the Benefit Entitlement Act (Koppelingswet) entered into force on 1 July 1998 (see CERD/C/304/Add.46, para. 8).

155. The main aim of the Act is to link the entitlements which aliens can claim from administrative authorities - in the way of payments, facilities, benefits, exemptions and permits - to legal residence in the Netherlands. At the same time, provision will continue to exist - outside the social security system - for asylum-seekers waiting for a decision on their initial application for admission, and medical treatment for illegal residents remains guaranteed. Since the Act took effect after the reference period for this report and no data are available on its application, this matter will be dealt with in more detail in the next report.

6. Article 5 (e) (v) - Education

(a) Preparation for education

156. The programme on ethnic minority children aged 0-18 is a joint programme run by the Ministry of Education, Culture and Science and the Ministry of Health, Welfare and Sport. Its aim is to prevent and alleviate educational and other problems and so to help improve the position of ethnic minority children within society. The programme includes both educational priority policy and experimental projects relating to pre-school and out-of-school development and the role of the parents in these respects.

157. The best known intervention programme (the Step-by-Step programme relating to pre-school and early years education) has already been discussed briefly in earlier Dutch reports. The programme was introduced in 1987 and given a face-lift in 1996. A report on welfare policy in the 1995-1998 period, submitted to the Dutch Parliament in June 1998, shows that the programme now encompasses 94 projects. Averroes, a UNESCO training centre on early childhood policies which is implementing the programme, has reached an estimated 25,000 children in over 100 (of the 600) Dutch municipalities.

158. Research on the integration of the programme in municipal policies shows that the scheme promoting the introduction of Step-by-Step projects in the municipalities has been fairly successful. This is mainly due to the arrangements for co-funding by national and local authorities. In many municipal areas, projects have been integrated into the existing network of provision. Local authorities feel that the programmes increase parental involvement in education and promote social cohesion in deprived urban areas.

159. There is a follow-up to the Step-by-Step programmes in both primary schools (experiments with an extended school day) and secondary schools. Since 1997, attention has focused more on the 10-18 age group. Considered in retrospect, the 1995-1998 period has seen a slight upward trend both in uptake by children from the ethnic minorities and in their level of

attainment. A survey of Dutch research on the various family intervention programmes shows, however, a virtual absence of practically useful academic evaluations. Where studies have been conducted, the effect of the programmes in terms of educational attainment appears to be marginal. On the other hand, the studies have identified positive effects on the social and emotional well-being of participants and sometimes in their social behaviour, self-confidence and motivation to succeed. The programmes are also observed to have a positive impact on the mothers who participate, encouraging them to make use of facilities and get involved in their children's education. They have also had a positive effect on labour market participation by women from ethnic minorities. Child development clearly depends on more factors than a relatively brief pre-school programme: the influence of later schooling and of the child's home life can quickly neutralize the positive effects. Many children from immigrant families are behind in their cognitive, social and emotional development when they start school and never manage to catch up. Problems of cognitive development may be connected with language difficulties.

160. In 1999, the new Government will announce a fresh welfare policy programme for the 1999-2002 period. This will include policies on the subject of pre-school and out-of-school programmes for ethnic minority children.

(b) Reducing segregation within the education system

161. Ethnic diversity in schools with a high proportion of pupils with a non-Dutch cultural background has increased over recent years. There are fewer schools with a high percentage of such children from a single ethnic community.

162. The aim of government policy is to improve the quality of schools in general and to take effective action to eliminate educational disadvantage in particular. In other words, it is directed at improving bad schools. The general policy of improving the quality and effectiveness of education is being used to reduce segregation within the education system. Thanks to the increased transparency of schools, parents are now in a better position to exercise choice on the basis of quality. This, combined with the provision of information to assist parental choice and the greater involvement of parents in their children's schooling, is helping to reduce segregation resulting from patterns of parental choice and the flight to "white" schools.

163. The policy of promoting intercultural education and the campaign to recruit more school staff with a non-Dutch cultural background are also designed to promote integration within education (see annex, enclosure with letter ref. IB/1998/46625).

(c) Diversity in compulsory education

164. The ethnicity of school rolls is largely dependent on external factors such as the concentration of ethnic minorities in the cities (and in particular neighbourhoods within them). Another important factor is the demographic structure of ethnic minority communities (over 50 per cent children and young people). In addition, the concentration of ethnic minority pupils in certain inner-city primaries is aggravated by tendencies like particular patterns of parental choice and the flight to "white" schools.

165. The policy of promoting inter-cultural education and the campaign to recruit more school staff with a non-Dutch cultural background are also intended to promote integration in education.

166. Alternative anti-segregation policies would raise the following objections:

(a) An active policy of dispersal (designated schools, "busing", etc.) is incompatible with the Dutch constitutional principles of freedom of education and parental choice. There would be little political or public support for any infringement of these principles;

(b) Experience in the United States and elsewhere has shown that active dispersal policies tend to produce social unrest but little actual effect;

(c) The effectiveness of any active dispersal policy would also be impeded by the demographic composition and concentration of ethnic minority communities in the cities (and in particular neighbourhoods within them).

(d) Government policy

167. The policy pursued by the Netherlands Ministry of Education, Culture and Science with regard to schools with a large proportion of pupils from the ethnic minorities is based on the following principles:

(a) The quality of educational attainment and teaching in such schools are and will remain a matter of concern and are subject to regular monitoring;

(b) The ethnicity of the school roll must not be allowed to affect the educational attainment of the pupils. Studies of the relationship between concentrations of ethnic minority pupils and standards of attainment in particular schools have failed to produce any clear result. Some studies reveal a slight negative correlation between ethnic concentration and educational attainment in a small proportion of ethnic minority pupils. Others suggest that the weak statistical relationship vanishes if the social background of the children and the educational level of the parents are taken into account. In any case, the relationship between ethnic concentration and educational attainment is not a hard and fast rule: there are good and bad "white" schools and good and bad "black" schools. International comparisons show that ethnic minority pupils in the Netherlands score well in arithmetic and mathematics: in fact, they do better in these subjects than non-ethnic minority pupils in several other European countries. The high mean level of educational attainment in the Netherlands and the low mean level of education among members of immigrant communities do much to explain the difference in attainment between native Dutch and ethnic minority pupils in the Netherlands;

(c) Although an excessive concentration of ethnic minority pupils in a particular school can create a barrier to their integration, the results of studies are so contradictory that they offer as yet few starting-points for any specific policy on desegregation.

168. The aim of government policy is to improve the quality of schools in general and to take effective action to eliminate educational disadvantage in particular. In other words, it is directed at improving bad schools, whatever their ethnic composition.

E. Article 7

(a) European Year against Racism (1997)

169. The EU frequently identifies special issues to be highlighted for a year, such as the family, the elderly or lifelong education. In the 1980s the European Parliament launched the idea of a European Year against Racism, prompted by the realization that growing racism and xenophobia in several member States conflicted with European aspirations to foster integration.

170. On 31 January 1997, the Minister of the Interior and Kingdom Relations officially inaugurated the National Committee on Racism (NCA), whose task was to prepare a programme for the European Year against Racism in the Netherlands within the parameters set by the European Commission and the Central Government Anti-Discrimination Forum. The aim of the programme was to foster solidarity and tolerance in Dutch society.

171. The NCA launched what it called the Colourful Cooperation campaign focusing on "everyday racism" and, in the second place, "racism and work". The NCA linked up with activities that other organizations were planning for the Year against Racism, but also organized new events. In addition, it dispensed funds to small projects aiming to combat racism and promote integration, thereby fostering these aims itself. New partnerships were forged as well, one example being an initiative launched by the Zeeburg Moroccan Council, whereby police officers and residents of the Zeeburg neighbourhood in Amsterdam met to tackle local problems. Another example is the Rotterdam football project, which aims to encourage integration in sport under the slogan "White and black play football together". The Federation of Netherlands Trade Unions (FNV), the National Bureau against Racism (LBR), the Forum and other anti-discrimination organizations coordinated a project to tackle racism in the workplace. The Loesje project involved mixed ethnic groups meeting together to compose humorous anti-racist slogans. A widely publicized quiz for personnel managers and training officers, held as part of the "Rainbow Workplace" campaign, served to heighten public awareness of the problem of racism.

172. In the framework of the European Year against Racism, the Netherlands also organized a number of meetings in its capacity as holder of the Presidency of the European Union. At a conference entitled "Social integration: creating opportunities for all", which was held in The Hague from 9 to 11 April 1997, policy makers from the 15 EU member States compared notes on best policy and practice with regard to integration and the multicultural society. In workshops devoted to local projects in a range of sectors (education, employment, business, sport and health care), they discussed their varying experience and came to a number of conclusions. These may be summarized as follows:

(a) Government should at all times take account of immigration as a permanent phenomenon in the countries of Western Europe and of its consequences for the social infrastructure;

(b) The integration of immigrants and their descendants within general and vocational education and the labour market is seen as the most necessary and effective policy.

Problems in this respect are the shortage of jobs for low-skilled workers (unemployment) and the fact that work in the informal sector offers no guarantee of ever transferring to the formal sector;

(c) More than is now the case, employers should view cultural diversity as a positive factor in production; partnership with (local and central) government is one means of achieving this;

(d) The majority of practical results are achieved via local projects, but continuity and the right enabling conditions are essential. It is up to Government to provide these;

(e) Finally, there had been some encouraging experience with short-term affirmative action. Here too, however, longer-term support by national and other government authorities was seen as vital. Effective action to combat discrimination and racism is an integral part of all this.

173. In the annex to this report is included, for information, the final report of the conference, including the conference theme paper describing the latest international developments in the debate on the policy and practice of social integration of ethnic minorities.

174. The conference and its results were taken into account when preparing the European NGO position on the issue of social integration, listed in February 1998 as a special priority on the agenda of the United Nations Commission for Social Development (commitment 4 in the Copenhagen Declaration of the World Summit for Social Development).

175. Though in retrospect the EU Year against Racism did not serve to eradicate racism in the Netherlands or in Europe, it was nevertheless a successful venture. It highlighted the importance of combating racism and discrimination, and encouraged numerous organizations to pick up on the theme and take measures to foster the integration of ethnic minorities in the Netherlands.

(b) Sport and ethnic minorities

176. The Ministry of Health, Welfare and Sport implements its anti-discrimination policies in the field of sports in various ways:

(a) Via the major Sport, Tolerance and Fair Play project (of which action against discrimination is one component);

(b) Via policy on target groups, in particular ethnic minorities;

(c) Via action to combat football hooliganism, in particular preventive policy aimed at supporters, this being closely related to anti-discrimination policy.

177. Promoting tolerance and fair play in the world of sport also helps to prevent and combat problems such as discrimination, racism, xenophobia, vandalism, doping, etc. Tolerant behaviour is encouraged and the essential character of sport, fair play, is emphasized wherever

possible. Various groups are targeted: not just those who participate in sports, but also spectators, supporters, coaches, schools, parents, the media, sponsors, etc. Practical action includes a national anti-discrimination campaign directed at sports clubs.

178. A Dutch action plan for 1997-2000 has been drawn up and is being implemented by an external organization, the Netherlands Organization for Sport, Tolerance and Fair Play. The State Secretary for Health, Welfare and Sport is subsidizing this action plan and has set up an advisory committee on the subject, with members from the world of sport. The Dutch action plan on sport, tolerance and fair play is a model for other national plans and attempts are being made internationally to integrate the project into established events like the European Football Championships in 2000.

179. Action is taken to encourage the sports world in the Netherlands to adopt an open, tolerant attitude towards people with a non-Dutch background (and other minority groups like women, older people and homosexuals). On the other hand, people with a non-Dutch background are also encouraged to take part in sports and to adopt administrative and support roles (coaching and training). The instruments supported by the ministry - by way of project subsidies - are: research, policy support, training, complaints procedures, the establishment of disciplinary procedures in individual sports federations and public education.

180. At national level, there is inter-ministerial consultation about preventive policy aimed at supporters. The Ministry of Health, Welfare and Sport participates in the Interdepartmental Working Group on Football Hooliganism and in consultations within the Council of Europe. A standing committee on the prevention of football hooliganism monitors action to tackle discriminatory behaviour by football supporters on the basis of annual reports from member countries and holds consultations on specific measures with the Union of European Football Associations (UEFA) and the International Football Federation (FIFA).

Part Three

THE NETHERLANDS ANTILLES

I. GENERAL

181. Migration has had a great influence on population trends in the Netherlands Antilles throughout the twentieth century (see the overview published by the Netherlands Antilles Central Bureau of Statistics in Modus Statistisch Magazine, which is enclosed as an annex). The diagrams illustrate how dramatic developments have been in the past 40 years. The Netherlands Antilles has traditionally been both multicultural and multi-ethnic. Given this tradition, and an acceptable level of tolerance in society, too little attention has been devoted to the consequences of immigration and the social processes it has generated.

182. As a result, policy prior to 1992 unfortunately paid only scant attention to the impact of migration on priority issues such as measures to tackle the increase in crime, youth unemployment and the school drop-out rate, or on efforts to achieve economic recovery.

During preparations for the International Conference on Population and Development, and in the aftermath of the hurricanes of the past few years, it became evident that policy on these matters was urgently needed.

183. Various subregional and national meetings established that migration in the Caribbean region was giving cause for concern, and that action was called for. The Netherlands Antilles, in particular St. Maarten, the Bahamas, and the British and American Virgin Islands, were identified as areas with an immigration problem. The vulnerable position of immigrants, in particular women and children, was also recognized. The figures showed that more than 50 per cent of the population of St. Maarten was of foreign origin.

184. A Permanent Committee on population issues was established in 1994. Efforts are now being made to compile and analyse statistical data on population trends in the Netherlands Antilles, and particularly, their socio-economic and political impact. The main objective at present is to collect data that will shed light on the situation and facilitate implementation of the Convention. Reference is made to article 2 of this report, which contains information on the findings and provisional conclusions of a recent survey conducted by the Permanent Committee.

II. INFORMATION RELATING TO ARTICLES 1 TO 7 OF THE CONVENTION

A. Article 1

185. The Netherlands Antilles can be characterized as a multicultural society. To understand this, we must go back in time. Curaçao, for example, the biggest of the five islands, is conspicuously multiracial. Like other Caribbean societies, slavery was commonplace on Curaçao up to the mid-nineteenth century. A social stratification, based on race, emerged early on in the slaveholding communities of the Caribbean. Society was structured basically as follows: at the top were the white plantation owners, senior civil servants, merchants and military officers; there was a somewhat larger middle group, comprising lower-ranking white civil servants, tradesmen, shopkeepers, soldiers and sailors; at the bottom were the slaves, the biggest group, forming the basis for the rest of the structure. Liaisons between white males and slave women led to children of mixed race, known in the Caribbean as mulattos. It is not true that these mulattos were usually 'freed' by their white fathers, but they accounted for 50 per cent of the free non-whites and belonged to either the middle or lowest social class.

186. There was a wide social gap between whites and non-whites. The white elite on Curaçao also included a community of Sephardic Jews who had migrated to Amsterdam from the Iberian peninsula, before settling permanently in Curaçao.

187. Though the abolition of slavery in the course of the nineteenth century was the first step in a process that would change this rigid system, the non-white population did not become socially mobile until the twentieth century. In Curaçao, the establishment of the Shell refinery played a major role. The resulting economic development ushered in a process of modernization that led to changes in many other sectors of society. Curaçao became far more westernized than the other islands. Western, more objective standards were gradually applied in terms of the

opportunities open to the individual. The racial criteria from the days of slavery lost their importance. Nonetheless, the current social structure does not reflect this process; the lower socio-economic classes are still predominantly black.

188. Like other Caribbean societies, Curaçao still has a racial social structure. To understand the society a distinction should be made between:

(a) The social structure as such, based on social prestige;

(b) The economic power structure;

(c) The political power structure, reflected in the distribution of political/government positions.

189. Although there is some social and economic mobility, the change in the position of the non-white population is particularly evident in the political power structure. This is hardly surprising, since most of these positions became available when the Netherlands Antilles gained administrative independence, i.e. they were not already occupied by the established elite. The same pattern occurs in other Caribbean societies. There too, the political elite is formed by leaders from the non-white population, including the descendants of contract labourers from India, who were recruited after the abolition of slavery.

190. In addition to politics, the trade union movement has been a channel through which the non-white population has become more mobile.

191. A favourable development of the past decade is the revival of a Caribbean identity. There has been a growing awareness among the inhabitants of Curaçao, for example, that their island belongs, culturally, socially and economically, to the Caribbean. This had also been the case prior to industrialization, when Curaçao maintained closer economic relations with, and was more dependent on, other countries in the region. Trade with both the mainland coastal States (Venezuela, Colombia and Panama) and the other islands (especially the Dominican Republic and Cuba) was one of the mainstays of the economy. Cultural ties too were fairly close, due, in part, to the role various schools on the island played. Two of these schools, the Colegio Santo Tomas for boys and the Colegio Habaai for girls, recruited pupils from neighbouring Spanish-speaking republics and had Spanish as their language of instruction. Spanish was also the main language spoken by the island's inhabitants. Newspapers from the period show that there was a very clear interest in events occurring in the region.

192. In the wake of industrialisation, and the ensuing process of modernization, Curaçao became more focused on the Netherlands and the United States. Its dependence on the region declined to a point where supplies of crude oil were its only direct economic link, and this was a matter over which it had no say. Dutch replaced Spanish as the main language, with English playing an important role.

193. Another factor contributing to Curaçao's orientation on the world beyond its own region was a scholarship system which enabled young people to undergo higher education in the Netherlands and, to a lesser extent, the United States. Many of them returned to Curaçao with a Dutch- or English-speaking partner, which further intensified the island's Dutch and American orientation.

194. Curaçao's renewed identification with the Caribbean region should be seen in this light. Superficially, the Netherlands Antilles may appear to be highly westernized, but the islands are Caribbean through and through. Their communities are in a process of mental decolonization, in which they are attempting to define their own constitutional, political and cultural objectives.

195. The following should be taken into account when studying the statistics on the Netherlands Antilles. Distinctions are indeed made on the basis of ethnic origin and race, but they are not evident in the statistics. The various groups have mixed so much that race or ethnic origin have become very complex factors to define. From the point of view of methodology, it is extremely difficult to classify the population in these terms. For this reason, the Netherlands Antilles has always chosen to classify its population according to place of birth and nationality, i.e. to distinguish between nationals and migrants. However, these criteria do not always shed light on discrimination in all its forms.

B. Article 2

1. Equality

196. The principle of equality is the cornerstone of our legal order, and is enshrined in article 3 of the Constitution of the Netherlands Antilles, which provides that any person in the territory of the Netherlands Antilles is entitled to protection of their person and goods. Of course, it is not only a matter of the right to protection of persons and goods. The tenor of the article is that all individuals are equal before the law.

197. Furthermore, under the provisions of article 43 of the Charter of the Kingdom of the Netherlands, it is the duty of each of the countries to promote observance of fundamental human rights and freedoms, legal certainty and good governance. Any person who believes they have been accorded unequal treatment and have thus suffered discrimination may have recourse to the courts. Individuals who cannot afford the cost of legal action have been able to obtain full legal aid since 1955.

2. Opinions on migration

198. As mentioned above, migration plays an important role in population trends in the Netherlands Antilles. On the Leeward Islands, in particular Curaçao, emigration has been the main factor in the past few years, as the following figures illustrate. Figures from the Netherlands show that last year alone, i.e. up to September 1998, more than 6,000 Antilleans settled there, the great majority from Curaçao. Some also emigrated to other countries. In the

same period, 2,000 people migrated to the Leeward Islands.* This would mean that, on an annual basis, 5,000 more people leave the Islands than settle there. Annual natural growth (births minus deaths) is approximately 2,000 people. This means that the population of the Leeward Islands is decreasing by at least 3,000 people a year - out of a total of 165,000.

199. In late 1998, the Permanent Committee on Population Issues conducted a study on Attitudes to Population Policy. In the study, people aged 18 and older were asked whether they had ever considered emigrating from the Leeward Islands.** Nearly one in five (19 per cent) of the respondents answered in the affirmative. There was little difference between Curaçao and Bonaire. When asked whether they wished to emigrate on their own or with others, 25 per cent replied that they would emigrate on their own. The majority (60 per cent) wanted to emigrate with their partner and/or children. Almost one third of the respondents were planning to take the step within a year, and 10 per cent within 18 months. The rest (58 per cent) had not yet decided. Two thirds of the potential emigrants gave the Netherlands as their destination. These figures give cause for concern, since the population of the Leeward Islands comprises some 115,000 people aged 18 and over.

200. If we take the findings of the study as an indicator, at least 22,000 people want to emigrate and 7,000 will take the step in 1999, of whom at least 4,500 (i.e. two thirds of the total) will settle in the Netherlands. This figure will doubtless be much higher, since we have taken no account of the large majority who plan to emigrate with others (in this case, people aged under 18), or of those who did not know precisely when they would depart, and might do so in considerable numbers this coming year. The figures from the study are therefore consistent with the sizeable emigration flows to the Netherlands in recent years. The exodus is likely to continue for the time being.

201. The study also polled opinions on the sizeable group of immigrants in the Antilles. Many of them - including illegal immigrants - come from the Caribbean region (e.g. the Dominican Republic, Haiti and Jamaica), South America (e.g. Colombia, Suriname and Venezuela) and the Netherlands. Respondents were asked whether they agreed with a number of positive and negative statements about immigrants, e.g. "they are an asset because they bring us into contact with other cultures" and "they take jobs away from Antillean nationals".

202. The respondents held different views on the four positive statements about immigrants (table 6). A minority thought that they were an asset because immigrants brought them into contact with other cultures. Only a small majority was in favour of a policy which would allow non-Antilleans to settle in the country if the economic situation permitted. The same applied to

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* Numbers of emigrants: Statistics Netherlands up to September 1998. Extrapolating for the entire year, this would mean that approximately 8,000 people emigrated to the Netherlands - more or less the same number as in previous years. Some 3,000 migrants settled in the Antilles over the same period. Unlike previous years, the number of names removed from the population registers in Bonaire and Curaçao are beginning to approximate the numbers entered in registers in the Netherlands.

** A similar study will be conducted on the Windward Islands in 1999.

the statement that the children of aliens living in the Antilles should be at liberty to marry whomever they wanted, including people from outside the Antilles. Two thirds of the respondents agreed that non-Antilleans who had lived in the Antilles for five years or more should be allowed to vote in island council elections. This now applies to Dutch nationals who have been entered in the population register for a year or more. Respondents from Bonaire were generally more positive about immigrants than respondents from Curaçao.

203. The majority agreed with four out of the five negative statements (table 6). A minority thought that aliens who had worked in the Antilles should return to their countries of origin on retirement. More respondents believed that the large number of aliens led to more crime, and that aliens took jobs away from Antilleans. Two thirds believed that aliens should only be admitted to do jobs the Antilleans did not want to do. A large majority, almost 90 per cent of the respondents, agreed with a statement specifically about illegal immigrants, i.e. that there are too many "undocumented" people living in the country and the Government should take severe measures against illegal immigration. Here too, respondents from Bonaire were less negative in their opinions than respondents from Curaçao.

Table 6

Percent of people agreeing and disagreeing with positive and negative statements about immigrants in the Antilles

Positive statements	Agree	Disagree	Don't know
They are an asset	43	52	5
Children should marry whom they want	53	37	10
Admit if economic situation permits	56	39	5
Should have right to vote in elections	67	25	8
Negative statements			
Should return home on retirement	38	54	8
More crime	56	36	8
Take Antilleans' jobs	57	40	3
Should only do jobs Antilleans do not want	66	31	3
Severe measures against illegal immigrants should be taken	89	9	2

204. This somewhat negative attitude towards immigrants may have something to do with the poor economic situation on the Leeward Islands - in particular Curaçao, where unemployment is high (nearly 17 per cent). The study shows that opinions on both admission and integration are influenced by the extent to which the respondents regard immigrants as rivals for jobs. Respondents with either a full-time or part-time job have a more positive attitude than jobless respondents. Moreover, the younger, the better educated and the higher the socio-conomic status of the respondent, the more positive the opinion. The fact that respondents in Bonaire are generally more positive than respondents in Curaçao can also be linked to the more favourable economic situation in Bonaire.

205. The information collected to date shows that the impact of migration is both surprising and significant. The influx of migrants, who were welcomed with open arms when labour was in

short supply, is now giving rise to problems. At the same time, emigration from the Antilles to the Netherlands is increasing. The Government is therefore seeking solutions to the complex problems migration has given rise to. In this connection, it exchanges information with and applies solutions used by other countries in the region and the Netherlands.

C. Article 3

206. Reference is made to the information contained in the last report.

D. Article 5

1. Article 5 (d) (i)

207. Further to the information contained in previous reports, in the interests of effectiveness, the Minister of Justice will delegate responsibility for admitting aliens to the executive councils of the island territories. Application procedures for residence and work permits are to be simplified and, to safeguard legal certainty for the applicant, processing is to be subject to a time limit. Immigration forms are to be abolished for all residents travelling within the Netherlands Antilles. However, proof of identity will continue to be required of all residents aged 12 or over.

2. Article 5 (e) (iv)

208. Legislation on patients' rights should be finalized in the 1998-2002 period. This legislation will provide the basis for the establishment of an independent complaints body, to which everyone can have recourse. Vulnerable groups in society (e.g. handicapped people, young people and schoolchildren) will receive special attention.

209. Without detracting from the problems faced by the other island territories of the Netherlands Antilles, urgent solutions are required for health problems on St. Maarten as a result of migration. Economic development and the growth of the tourist industry have brought about immense changes in St. Maarten in the past few decades. Relaxation of the tax laws has contributed to the increase in the number of hotels, holiday villas and flats, and to an explosive growth in employment opportunities. The shortage of suitable local staff has led to widespread immigration from the other Antillean islands, the Netherlands and neighbouring islands (Haiti and the Dominican Republic in particular). Some of these immigrants are illegal, but have been living in St. Maarten for years, frequently in very difficult circumstances. Because of their illegal status, they have poor access to official health and other care services. The government pays the cost of medical care for the seriously ill, and doctors sometimes provide their services free of charge on humanitarian grounds. Various field studies have shown that immigrants suffer from health problems because of, for example, their illegal status, the poor conditions in which they live, their poor knowledge of hygiene, and language difficulties. This was confirmed during the weekly missions held after the hurricane season. Since there is no border between the Dutch and French sides of the island of St. Maarten and people travel freely between the two, these health problems affect both communities.

210. Given the seriousness of the situation, a study was conducted among young immigrants in May 1998 to assess the extent of the problem. A programme was launched on the basis of the

study to improve health care for immigrants, especially children and young people, on both the Dutch and French parts of the island. The main aim is to include the target group in the health care network, and specifically:

(a) To improve access to health care by setting up mobile services;

(b) To improve prevention by providing courses on various aspects of health, social courses and vaccination programmes, and by training health care and social service officers in the relevant neighbourhoods;

(c) To improve hygiene;

(d) To set up a think-tank to consider ways of promoting health.

211. An interim evaluation (a questionnaire) of the activities launched in the field of medical treatment and care in urgent cases:

(a) Confirmed the programme's aims were appropriate, given the number of patients needing treatment, the treatment they need and the needs of the population;

(b) Showed that the right balance was being struck between services and demand;

(c) Showed that the programme was improving the relationship between volunteers and the population.

3. Article 5 (e) (v)

212. The government has now explicitly turned its attention to issues affecting children and young people, education in particular. Youth affairs thus occupy first place on the political agenda. Improving the position of young people calls for a joint approach on the part of all the actors involved, not least young people themselves. A national youth policy programme has been drafted, which reflects resolutions issued by various youth conferences and devotes attention to the problems of young migrants.

213. In 1997 a Youth Summit was held on St. Maarten, with the aim of hearing young people's opinions before a youth policy plan was drafted. Three hundred young people attended the summit, which had migration as one of its main themes. The participants came to the following conclusions:

(a) Higher fines should be introduced for employers who take on illegal immigrants;

(b) The children of illegal immigrants are entitled to an education;

(c) Illegal immigrants awaiting deportation should be housed in special centres.

214. The recommendations listed under (a) and (c) have since been followed up. The recommendation listed under (b) touches on a complex problem, which demands further attention.

215. In devising and implementing integrated youth policy, it is a matter of principle that all actors be involved.

216. Since the Netherlands Antilles comprises five island territories, different objectives have been established for each. In Curaçao, policy will focus on preventing dropping-out of school, youth unemployment, unhealthy and unsafe living conditions, and crime. In Bonaire, priority will be given to dropping out, improving coordination between school and job opportunities, and teenage pregnancy. In St. Maarten, the focus will be on youth unemployment, better coordination between school and job opportunities, and access to health care and schools for the children of illegal immigrants. In St. Eustatius and Saba, the main priority will be support to parents in bringing up their children.

217. In its national youth policy programme of March 1998, the Government indicated that it will give top priority to youth policy, and to the impact of migration among young people. Young Antilleans leave the islands because they have too few educational and job opportunities. At the same time, many young immigrants, some of them illegal, settle in St. Maarten and in far smaller numbers in Bonaire and Curaçao. In practice, the presence of many young foreigners is likely to be permanent, despite their frequently illegal status.

218. The government is making an effort to ensure that all school-age children complete their education. However, some 4 per cent finish primary school without meeting the criteria for entry to mainstream secondary education. Between 300 and 600 children drop out of primary school at an earlier stage, many because their parents are drug addicts. Others should really attend special schools, but because of the long waiting lists they often drop out of school altogether.

219. The children of illegal immigrants form a special group. Whether they attend school depends on the policy of the island territory concerned, and the number of places available.

220. In St. Maarten, the number of children with parents from Haiti and the Dominican Republic will rise in the next few years. These two population groups now make up 25 per cent of the total and one woman in every three in the 15 to 44 age group is of Dominican or Haitian origin. Their children speak neither Dutch nor English at home, and though their mother tongue is either French or Spanish, they often have Dutch nationality. Despite the efforts they make, primary schools find it difficult to communicate with them, making teaching an immense problem. In order to give these children the opportunity to attend school despite the language barrier, the public-authority schools usually place them in classes with younger pupils.

221. After the hurricanes that have hit the island since 1995, special crèches and nurseries have been set up under the Emergency Programme for the pre-school-age children of immigrants, and some of them have since been admitted to the regular nurseries. However, there are too many young children for the places available.

222. Studies show that children belonging to one of the following categories are frequently among those who fail to attend school:

(a) Children with Dutch nationality who speak a different language;

(b) Children born on St. Maarten whose parents are legal immigrants;

(c) Children who are registered but whose parents are illegal immigrants;

(d) Children who are not registered and whose parents are illegal immigrants.

223. Most children who cannot be placed in mainstream schools attend "makeshift" schools. These are private schools set up by foreign teachers on their own initiative. Most of them do not teach the formal curriculum or use the prescribed teaching materials, and the accommodation is poor. Moreover, they charge a fee of 60-150 Netherlands guilder per month, which the target group cannot always afford. In order to tackle this problem, the Government of St. Maarten is working together with UNDP on a project to start a holding school for these children.

224. In the 1998-2002 coalition agreement, the Government explicitly identified the problem of immigrant children in schools, and made it a priority of policy.

225. The influx of children who do not speak the majority language gives rise to very serious problems and calls for:

(a) Measures to enforce the Compulsory Education Act;

(b) Special assistance from the education ministry;

(c) Statutory provisions enabling pupils to be accommodated, especially in Bonaire and St. Eustatius;

(d) Strict monitoring of compliance with legislation relating to the admission and expulsion of aliens.

226. The Government is also of the opinion that pupils' mother tongue should be adopted as the language of instruction in primary schools, i.e. English on the Windward Islands and Papiamento on the Leeward Islands. Account will be taken of parents' freedom of choice, but the practical implications will have to be worked out within the context of the democratization of education. The provision of more information is, however, an essential condition. If parents so wish, conditions will be created enabling Spanish and English to be taught in primary schools.

227. According to the 1992 census, 7.8 per cent of women between the ages of 15 and 19 have at least one child. These young women often drop out of school and they have no, or inadequate child-minding facilities. One of the reasons is the gradual disappearance of the extended family.

228. The problem of teenage mothers occurs on all the islands, but is most prevalent in St. Maarten, where 11 per cent of babies are born to mothers in the 12-16 age group, many of

whom are "undocumented". Teenage mothers on all the islands, and in particular in St. Maarten, receive considerable information and counselling. In this context SIFMA (a non-governmental organization for the education and counselling of parents and children) cooperates with the secondary schools in St. Maarten to organize courses aimed at keeping young mothers in school.

4. Article 5 (e) (vi)

229. The Government has resolved to redress the deficiencies and neglect that have characterized cultural policy since the closure of the Bureau for Culture and Education in 1986. Cultural studies and activities may provide a valuable contribution towards solving social and economic problems.

230. The planned disbandment of the Instituto Lingwistiko Antiano (ILA) and the Netherlands Antilles Archaeological and Anthropological Institute (AAINA) has created a vacuum, due to the failure to establish alternatives.

231. A number of measures will be taken on the islands of the Antilles, such as the organization of cultural activities, and the promotion of cultural awareness, with more focus on the Caribbean region as a frame of reference. Culture, sport and youth work will be integrated into education.

E. Article 6

232. No new developments have occurred since the last report.

F. Article 7

233. In 1995, the government designated 16 November as the National Day of Tolerance. On this day, schools devote special attention to the subject of tolerance and efforts are made to heighten public awareness. The Permanent Committee for Population Issues and Development supplies information via the local media. In addition, an annual art competition is organized in cooperation with schools to foster tolerance among young people.

234. The 1998-2002 government programme points out that national policy will also aim to protect the interests of a number of target groups, including migrants, in, for instance, the fields of health care and education.

Part Four

ARUBA

Introduction

235. For general background information on Aruba reference is made to the relevant core document (HRI/CORE/1/Add.68). The subjects that were dealt with in previous reports and that remained unchanged during the period covered by this report are not commented upon.

Furthermore, the present report will focus on the points raised and recommendations made by the Committee during the consideration of Aruba's eighth, ninth, tenth, eleventh and twelfth periodic reports.

I. GENERAL

1. Immigration

236. During the last 10 years Aruba has experienced a dramatic rise in its population due to massive immigration. This immigration has had a profound effect on all levels of Aruban society. In itself the influx of foreign labourers is nothing new to Aruba. In the course of Aruba's history the local labour force has continuously adapted itself to changing economic pressures by relying on migration. In times of economic prosperity, labourers have been attracted from overseas. In times of hardship, foreign labourers have returned home, often followed by Arubans forced to try their luck abroad.

237. The first big wave of immigrants arrived in Aruba with the establishment of the Lago Oil and Refinery Company in 1927. An enormous expansion in the industrial and transport sectors took place. Not only did traditional Aruban society, with its roots in agriculture and animal husbandry, undergo dramatic changes, but the opening of the refinery also led to an influx of foreign labourers to Aruba. Most workers were attracted from the surrounding English-speaking countries of the Caribbean. The following 20 years saw the quadrupling of the population.

238. Through automation and efficiency measures in the early 1950s, the refinery significantly reduced its workforce and eventually closed down in 1985. The closure had disastrous consequences for the Aruban labour market, as most economic sectors depended on the oil industry. The years 1985 and 1986 will go down as a turning-point in the twentieth century history of Aruba. In less than a year's time events took place that changed the core of Aruban society. Aruba attained its separate autonomous status within the Kingdom of the Netherlands in 1986, but had suffered an enormous economic blow with the closure of the refinery in 1985. Unemployment soared from a level of 5 per cent to an estimated 27 per cent. The social and psychological effects of the closure of the refinery were enormous. Rising unemployment and pessimistic future prospects triggered a significant population exodus. Many foreign nationals left the island with the Netherlands becoming the most popular migration destiny for Arubans.

239. In order to counteract the devastating effects of the closure of the refinery, the Government decided to fully develop the potential of Aruba as a prime tourist destination. The enormous boom in the tourist sector has resulted once again in a major influx of foreign labourers. This has led to a significant rise in the proportion of foreign-born inhabitants on the island as well as a sharp rise in the overall population.

240. The population census carried out in 1991 showed that compared with the census of 1981, the proportion of foreign-born inhabitants had increased dramatically. Out of a total population of 66,687, 15,910 persons were not born on the island. This means that about 23.9 per cent of the population residing in Aruba had immigrated to the island at some point in their lives. By 1996, over 87,000 people with 30 different nationalities were resident in Aruba.

2 Nationality and citizenship

241 During the consideration of Aruba's previous reports, the Committee noted that the majority of the Aruban population had Dutch nationality. When considering statistical information, one should bear in mind that Aruban nationals (in common with nationals of the Netherlands Antilles and the Netherlands) have Dutch nationality, that is, all persons born in Aruba to a mother or father with Dutch nationality automatically acquire Dutch nationality themselves. Furthermore, over the years many migrants have acquired Dutch nationality by naturalization. It is estimated that approximately 500-1,000 migrants apply for naturalization each year. Most applications are granted. Thus, the country of birth is not necessarily the country of nationality.

242 Considering the great diversity of ethnic backgrounds in Aruba, registration according to ethnic origin has never taken place and is not considered desirable. Any distinction between nationalities is made on the basis of citizenship. A definition of who is considered an Aruban has proved difficult to establish. Most recent studies and surveys have used the following definition, a person is considered to be an Aruban if he or she was born on the island and possesses Dutch nationality.

243 A closer look at the foreign-born population reveals a shift in the region of origin of those settling in Aruba. Unlike in the heyday of the oil industry, when people with British nationality from the various Caribbean islands constituted the largest foreign ethnic group, immigration is now dominated by immigrants with a Latin background, especially from Colombia, Venezuela and the Dominican Republic.

3 Admission policy

244 As an autonomous part of the Kingdom of the Netherlands, Aruba is authorized to pursue its own admission policy. As a small country with a limited infrastructure, which has in recent years experienced an accelerated population growth, Aruba maintains a restrictive policy with regard to the admission of foreigners. Any foreigner who wants to take up employment must have a work permit. The work permit will normally be granted only if there are no qualified persons available locally. Most residence permits are issued in connection with a work permit or in cases of family reunification. Normally a work permit is issued for one year and limited to a specific job. Once a permit has been issued it can only be revoked on the grounds set forth in the Law on Admission and Expulsion. It is estimated that there are approximately 17,000 permit holders on the island.

245 All persons illegally on the island can be expelled (regardless of whether they initially possessed a permit that later expired or was revoked, or whether they did not have one in the first place), in which case the person in question receives a written decision giving the grounds for expulsion. Against this decision, which qualifies as an administrative decision, an objection can be lodged with an independent committee which holds a hearing with both parties. This committee subsequently advises the Minister of Justice. A person who is not satisfied with the decision reached by the administrative body may appeal to an administrative court. In the intervening period, he/she may apply for an injunction to prevent expulsion. (The lodging of an appeal does not have the effect of automatically suspending deportation procedures.)

4. The labour market

246. Because of the growth in the tourist industry and the accompanying activities in the construction and service sectors, unemployment has declined dramatically. According to official figures supplied by the Department of Labour, the unemployment rate among persons actively seeking work and available to start work at the end of 1996 was 0.7 per cent. Approximately 66 per cent of unemployed persons are Aruban and 34 per cent non-Aruban. For further statistical information, please consult annex I.

247. Since the presentation of the previous report, important surveys have been held which have given the Aruban Government a better overview and understanding of the above-mentioned changes in Aruban society which have taken place in a relatively short period of time. For example, in cooperation with UNDP, the Directorate of Social Affairs conducted a study on the main features of the social impact of labour migration since 1986. In addition, the Central Bureau of Statistics conducted a Labour Force Survey, which devoted special attention to the position of foreigners in the labour market. Furthermore, in a 1996 report, the Aruban Social Economic Council, an advisory organ to the Government, focused on the increasing pressure on the public sector, noticeable in the fields of education, housing and infrastructure, as a result of the large-scale migration. The findings of these studies will be discussed under the relevant articles.

II. INFORMATION RELATING TO ARTICLES 1 TO 7 OF THE CONVENTION

A. Article 5

1. Article 5 (d) (i) - The right to freedom of movement and residence

248. The previous report mentioned that foreign domestic servants living in with their employers had to be employed in that capacity for a period of 10 years before they could change jobs. In the meantime this situation has changed, and presently the rule is that domestic servants living at the home of their employer have to be employed in that capacity for at least five years. After the first year they are allowed to switch employers, but not their occupation. Switching occupation within the period of five years results in the cancellation of the residence permit.

249. During the consideration of Aruba's previous report by the Committee at its fifty-second session, questions were asked as to why these restrictions were imposed and if domestic servants who did not comply with the restrictions could be expelled.

250. With regard to this policy, it should be mentioned that it originated from the need to protect both the employer and the employee. The employer has to provide the employee with proper housing (a separate room and bathroom) and medical insurance and pays the government fees for the residence and work permit, and is therefore entitled to some guarantee that the employee will not leave within a short period of time. Since less rigorous admission procedures apply in the case of domestic work, partly because there are no registered job seekers available on the island for this type of work and neither experience nor qualifications are required, migrants often use a residence/work permit for domestic work as a stepping stone to other

occupations, which undermines the Government's manpower planning. If domestic servants do not comply with these conditions, they can be expelled after their work permit has been withdrawn or has expired. As already noted, they may appeal against such a decision. After a period of five years, however, foreign nationals who have been employed as domestic staff are free to enter into new employment.

2. Article 5 (e) (i) - Employment policies

251. The Aruban Government is well aware of the central role of education in employment planning. A crucial way to facilitate people's access to employment in today's changing economy is through continued education and training programmes. As was mentioned in the previous report, the Government set up a vocational and occupational resettlement programme for adults in 1988 called Ensenanza pa Empleo (Training for Employment). Initially the training programme started with 10 courses and 325 enrolments. By 1996 the number of courses had increased to 54 and the number of enrolments to more than 22,000. Under Ensenanza pa Empleo, anyone can take a course in fields such as languages, bookkeeping, marketing, computer science and technical training, for a small fee. These courses enable men and women, regardless of their nationality, to broaden their skills and improve their position on the labour market. Of the more than 16,000 graduates who obtained a diploma or certificate in 1996, more than one third were foreigners.

3. Article 5 (e) (iii) - The right to housing

252. Housing facilities in Aruba have been under significant pressure as a result of the recent wave of migration to the island. The population density in Aruba has grown from 343 per km^2 in 1990 to more than 489 in 1996. This population density, coupled with the accelerated increase, has put the housing market in Aruba under extreme pressure for Arubans and foreigners alike.

253. From 1991, a wide range of policy measures have been established to ensure a more efficient response to the housing problem. these policy measures are geared towards:

(a) Creating an improved financing framework for home mortgages;

(b) Improved targeting of the government housing programme on specific income groups;

(c) Alleviating procedural and administrative bottlenecks in land supply;

(d) Strengthening the government agencies that deal with the housing programme.

254. In the past few years there has been an increase in the number of extended mortgages, largely because of the new mortgage schemes financed by the FCCA, the Aruban Government's Public Housing Agency. The FCCA offers two options to assist low-income Arubans and low-income foreign nationals:

(a) Low-interest loans to build new houses, and

(b) The provision of public housing for rent

255. The rental housing programme is subsidized by the Government and administered by the FCCA. It targets families with an annual income of less than 15,000 Aruban florins (equivalent to 8,600 dollars). The rent to be paid depends on the family income. Only 5 per cent of the total sum granted annually under the Government's rental housing programme can be allocated to non-Dutch nationals.

256. The FCCA investment and financing programme has been set at around 270 million Aruban florins for the period 1996-2000.

257. In 1995 the Government set up a National Housing Plan (Plan Nacional di Vivienda or PNV), to register the number of people seeking housing and thus to tackle the housing shortage more effectively. The Plan Nacional di Vivienda registered approximately 5,800 people.

258. Table 7 (below) shows the distribution of this need by country of birth of persons seeking a home. The striking feature is the discrepancy between the country of birth and nationality, which points to naturalization (60 per cent born in Aruba, 40 per cent elsewhere/85 per cent Dutch nationality, 15 per cent other nationalities). This means that a fairly high proportion of migrants are eligible for the same social provisions as Arubans in their quest for a home.

Table 7

Persons seeking housing, by country of birth and nationality (%)

	Country of birth	Nationality
Aruba	60	
Netherlands	2	85
Colombia	8	4
Dominican Republic	11	4
Venezuela	2	2
Haiti	3	1
Total	100	100

Source: Plan Nacional di Vivienda

259. The PNV recognizes that a large group of Arubans are financially incapable of building their own homes. This is why it recommended the creation of a Guarantee Fund, which was set up in 1997. This Guarantee Fund allows low-income families to obtain 100 per cent loans.

The total sum needed to fund the implementation of the housing programme will be approximately 450 million Aruban florins. In addition, the PNV has estimated that approximately 90 million Aruban florins will be needed for the infrastructure.

260. Looking at the places where migrants have settled, table 8 (below) compares the data from the 1991 census with those obtained in the 1994 Labour Force Survey.

Table 8

Proportion of Arubans/migrants per neighbourhood in 1991 and 1994 (%)

	1991		1994	
Neighbourhood	Aruban	Migrant	Aruban	Migrant
Noord/Tanki Leendert	82	18	80	20
Oranjestad West	66	34	66	34
Oranjestad East	68	32	61	39
Paradera	88	12	88	12
Santa Cruz	87	13	84	16
Savaneta	83	17	80	20
San Nicolas North	75	25	67	33
San Nicolas South	57	43	49	51
Aruba	76	24	72	28

Source: 1991 Census and 1994 Labour Force Survey.

261. In 1991, most migrants lived in the densely populated centres of Oranjestad and San Nicolas. Between the 1991 census and the 1994 Labour Force Survey, more than 9,000 migrants settled in Aruba. They settled largely in neighbourhoods that already had a large proportion of migrants. This is scarcely surprising, given that rents are quite low in these areas, which makes housing relatively affordable. In the second place, migrants tend to settle in close proximity to one another.

262. The region with the highest concentration of persons born outside the island is San Nicolas South. In this region 45.0 per cent of all men and 55.8 per cent of all women migrated to Aruba at some point in their lives. During the first major influx of immigrants at the time of the establishment of the oil refinery in the 1930s and 1940s, the vast majority of foreign workers settled in the immediate vicinity of the refinery, making San Nicolas the most densely populated city on the island at the time. Successive cutbacks in the oil industry's workforce and the closure of the refinery in 1985 led to a significant fall in the population of San Nicolas, from almost 40 per cent of the total population in 1950 to 20 per cent in 1991. The expansion of the tourist industry starting in the second half of the 1980s boosted the growth of the population of Noord/Tanki Leendert and did not bring any new development to San Nicolas.

263. In order to stimulate the economic development of this area, the Government presented a master plan (Sasaki Plan San Nicolas) for San Nicolas and the surrounding communities in 1995. The goal of this physical development plan is to establish a developmental framework that will reinforce the authentic character of the San Nicolas area. Initiated through the Ministry of Economic Affairs and Tourism with the participation of the Cabinet, government agencies, NGOs, community groups and private citizens, the master plan creates economic opportunities for residents through tourism, while ensuring that these opportunities are conceived on terms established by residents and are on a scale that both the social and natural environment can support.

264. The key components of the plan emphasize the enhancement of civic life, the designation of land for housing and other uses, the need to protect the natural environment and the provision of basic infrastructure for transportation, waste water treatment, recycling and solid waste management while renovating and expanding the present sport complex and identifying development sites for cultural organizations and business opportunities. For planning and budgeting purposes, the work has been organized in four phases. Each phase is projected to cost approximately US$ 75 million in public funds, with the entire programme expected to generate about US$ 900 million in private investment over a 15-year period.

4. Article (5) (e) (iv) - The right to public health, medical care, social security and social services

265. The Aruban Government pursues a social policy aimed at strengthening the position of the lower-income groups. Public investment in social infrastructure, improvement of the social security system and a scheme of maximum prices for basic necessities are among the main instruments that the Government employs to achieve this objective.

266. The Government's 1995 economic programme established a series of intermediate objectives as necessary conditions for the attainment of sustained growth. These objectives include the implementation of a social package designed to distribute equitably economic gains and to protect both individuals and communities that may be vulnerable in a time of economic transition. To this end, the Government raised the minimum wage, old-age pensions and benefits for the disabled. Furthermore, in 1996 the Government introduced a general medical insurance scheme, the aim of which is to provide a system of high-quality, affordable health care which is equally accessible to all.

B. Article 6

267. As mentioned in previous reports to the Committee, the main frame of reference for basic human rights in Aruba is the Constitution, in chapter I - and to some extent the other chapters - of which are enshrined the most important basic human rights. The first article of the Constitution of Aruba stipulates that "all persons in Aruba shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, gender, colour, national or social origin, belonging to a national minority, property, birth or any grounds whatsoever shall not be permitted".

268. In addition, it should be noted that article I.22 of the Constitution stipulates that "statutory regulations shall not be applicable, if such application would be incompatible with the provisions of [chapter I]". Based on this article, the courts are competent to examine statutory provisions, including the provisions in ordinances, in the light of the basic human rights provisions in chapter I. This provision gives individuals the right to invoke their fundamental rights in the event of a dispute before a court of law. The court then decides, as an independent and impartial body, if the provision is in accordance with the Constitution.

269. On 1 October 1997, a new Code of Criminal Procedure (CCP) came into effect. Under the new CCP a crime victim who has sustained damage as a result of the crime can join the criminal proceedings and claim damages of up to 50,000 Aruban florins. Under the previous CCP, this sum was 1,500 Aruban florins. To join the proceedings, it is required that the claim not be subject to the judgement of a civil court and that the nature of the claim makes it appropriate for it to be decided in a criminal case (art. 374 CCP).

270. Furthermore, in December 1997 the long-awaited Country Ordinance on Administrative Justice (LAR) came into effect. This Country Ordinance gives individuals legal protection from decisions made by government bodies. If a member of the public disagrees with a decision made by a government body, he can submit an objection to an independent committee. He is given an opportunity to clarify his position verbally during a hearing. The committee then submits its recommendations to the Government, which decides whether or not to revise its decision on the basis of these recommendations. If the decision still goes against the individual concerned, the latter can appeal to the administrative court. Prior to the entry into effect of the LAR, an individual who disagreed with a decision made by a government body had sole recourse, in general, to the civil courts. The advantage of the new procedure is that it is less formal and in principle free of charge. The barrier to submitting an objection to the LAR committee (and later, if need be, to the courts) is hence lower than before.

C. Article 7

271. In its concluding observations with regard to Aruba's tenth, eleventh and twelfth periodic reports, the Committee expressed its concern that the "process of education may not give the necessary attention to the fact that the majority of the population speaks Papiamento" and the Committee requested that more attention be given to "providing students from ethnic minorities at all levels of education with appropriate education in their mother tongue" (CERD/C/304/Add.46 (para. 13)). The following information is presented in order to further explain the language situation on the island and the current use of Papiamento in society.

272. The four main languages spoken in Aruba are Papiamento, English, Spanish and Dutch. While Papiamento is the national language and Dutch the official language, Spanish and English are widely spoken. The last two languages present themselves in different variations. There are the European English and Spanish taught in schools, the Caribbean English spoken in San Nicolas and heard in Caribbean music, the American English spoken by tourists and heard on American television programmes, and the many variants of Latin American and Caribbean Spanish spoken in the streets and stores and heard on television. Thus, children in Aruba grow up in a setting where they encounter different languages on a daily basis. Many learn to communicate in English and Spanish before ever having received instruction in these

languages at school. This contrasts sharply with their relationship to Dutch. Although most children receive years of instruction in Dutch, it is not the language that they would normally use in their play.

273. Though subject to explicit attacks in colonial times and strong influences from the other languages, the native language, Papiamento (a mixture of modern languages and old native Indian words), has survived and maintained its own identity. It is currently used in almost all the communications settings in the community: most radios broadcast in Papiamento, most newspapers are written in Papiamento and most individuals use it in interpersonal communication. Papiamento is also the language used in Parliament and at political meetings. The last census (held in 1991) produced the following figures with regard to the languages spoken in Aruba.

Table 9

Languages spoken in Aruban society

	Papiamento	English	Spanish	Dutch
Whole population	51 061 (76.6)	5 954 (8.9%)	4 946 (7.4%)	3 626 (5.4%)
School population	81%	7%	5%	5%

Source: 1991 Census.

274. In recent years a start has been made on a strong campaign in favour of Papiamento. The Committee for the Promotion of Papiamento declared 1997 the Year of Papiamento, which received a very positive response. On television and radio stations there are regular programmes on the national language and many Papiamento courses are organized, including higher scientific courses for teachers. Publishing in Papiamento has also been growing, not only of literature, but also of research documents and other types of studies which were traditionally published in Dutch or English. There are domains, however, where Papiamento is not the lingua franca: the areas of education, administration (where written language is concerned) and courts, where Dutch prevails. The world of business and commerce is dominated by English and Spanish.

275. An Ordinance on Official Languages has been drafted with the objective of promoting the use of Papiamento in writing in general, and both the oral and written use of Papiamento by administrative bodies and civil servants. The point of departure is that both Dutch and Papiamento will be recognized as the official languages of Aruba. (For practical reasons, Dutch will remain the language of the judiciary and legislation.) The explanatory note of the draft emphasizes the fact that the designation of two official languages in Aruba in no way prejudices the individual's right to use any language he desires, nor does it affect the prohibition of discrimination laid down in Article I.1 of the Constitution, which specifically mentions language.

276. As already noted, Dutch remains the language of instruction and textbooks as from the first class of primary school: children in Aruba learn to read and write in Dutch; in some cases the secondary school examinations are sent directly from the Netherlands. (Since higher

education in Aruba is limited, most students go to the Netherlands to continue their education at universities or other institutes of higher education.) Papiamento is the language of instruction at kindergarten and at special schools for children with learning problems or disabilities. In Aruban vocational education, Papiamento is frequently offered as a subject.

277. As early as 1884, however, colonial leaders started to doubt the effectiveness of an education based on Dutch, a language foreign to most children in the colony. In this century, many have studied the language issue in education and a variety of publications on this question have appeared. Since the 1970s, the language issue has appeared in all official documents on education, including "Ensenanza pa un y tur" ("Education for All"), a policy document prepared by the Departments of Education of Aruba and the Netherlands Antilles, the SHO document, a policy document on the reform of Aruban education prepared by the Ministerial Committee SHO (1987), the Strategic Plan PRIEBEB, a policy document prepared by the Ministerial Committee PRIEBEB (1997), and the document "Na Caminda pa Restructuracion di Nos Ensenanza Secundario General" ("Towards the Restructuring of General Secondary Education") prepared by the Steering Committee on the Restructuring of General Secondary Education.

278. The SHO policy document advocates the introduction of Papiamento as the language of instruction in the framework of the introduction of the dual-language primary school. In the PRIEBEB Strategic Plan, which deals with the education of pupils from 4 to 15 years of age, Papiamento is proposed as one of the languages of instruction in a multilingual school with two languages of instruction. The aim is to sustain and strengthen Papiamento. Papiamento will not serve primarily to facilitate the learning of Dutch, but it will serve the broad development of the child and of the language itself. The policy document prepared by the Steering Committee on the Restructuring of General Secondary Education advocates the introduction of Papiamento as a subject in all classes of the new-style general secondary education.

279. In November 1996, the Aruban Government formally established a National Platform for Language Policy to advise the Government. The Platform includes representatives of all the innovation projects, the Department of Education, the Teachers' Union, Boards of Education, the Teacher Training Institute, the National Library and the Institute of Culture. It is preparing a document to propose a national language policy that will call for Papiamento to be given a strong position throughout the educational system.

280. Besides the issue of the introduction of Papiamento into the school system, there is also the question of the influx of foreign children, who enter the school system at a later age, mostly after the reunification of their parents in Aruba. The enrolment of largely Spanish-speaking immigrant children in the past few years, especially in primary education, has not only significantly changed the characteristics of the school population, but has also confronted school authorities with some major challenges, both administrative and educational.

281. Since 1990, Aruba's Teacher Training College has devoted special attention to the training of teachers to provide multicultural education. Aspects of multicultural education are woven into all the components of its curriculum. As a teacher-training college it aims to equip students with the appropriate tools and skills to enable them to work in a multicultural educational setting and to enhance the ability and willingness of future teachers to handle social

and cultural diversity in the classroom. In this connection, the Universal Declaration of Human Rights and especially the Convention on the Rights of the Child are discussed as part of the course.

282. Many schools and organizations devote special attention to the themes of multiculturalism and respect and tolerance for the rights of others. The governmental human rights committee, together with non-governmental organizations, is often asked to give presentations and workshops. During these presentations the Universal Declaration, the various treaties and the reporting process are discussed.

List of annexes

Ministry of Health, Welfare and Sport, Final report of the Conference on Social Integration, Creating Opportunities for All, 1997.

"Migration and population trends" in Modus Statistisch Magazine, vol. 3, No. 3, September 1998/Netherlands Antilles Central Bureau of Statistics/Migration and Population Trends.